

THE HONORABLE RICARDO S. MARTINEZ

**United States District Court,
Western District of Washington**

ANGELA HOGAN and ANDREA
SEBERSON, on behalf of themselves and
others similarly situated,
Plaintiffs,

v.

AMAZON.COM, INC.,
Defendant.

Case No. 2:21-cv-996-RSM

**SECOND AMENDED
CLASS ACTION COMPLAINT**

SECOND AMENDED
CLASS ACTION COMPLAINT
Case No. 2:21-cv-693-RSM

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

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1 Plaintiffs Angela Hogan and Andrea Sebersson, on behalf of themselves and all others
 2 similarly situated, in their action against Defendant Amazon.com, Inc., allege the following
 3 based on personal knowledge, the investigation of counsel, and information and belief.
 4

5 I. INTRODUCTION

6 1. This case is about a betrayal of trust. Since its inception in 1994 as an online
 7 bookseller operating out of founder Jeff Bezos’s garage, Amazon—today a tech behemoth
 8 worth \$1.6 trillion¹—has cultivated a relationship with consumers that has garnered the
 9 company “astounding” customer loyalty.² Ultimately, however, Amazon’s nominal mission
 10 of “striv[ing] to offer ... customers the lowest possible prices, the best available selection,
 11 and the utmost convenience” came into direct conflict with Amazon’s ambition to dominate
 12 every sector of the economy. Faced with a choice between doing right by its customers or
 13 gaining market power in one of the many industries it seeks to control, Amazon made the
 14 wrong choice, jettisoning its promise of the “lowest possible prices” and violating the
 15 antitrust laws in a way that has injured—and continues to injure—hundreds of millions of
 16 its loyal customers.

17 2. To understand how and why Amazon violated the antitrust laws and betrayed
 18 the trust of its customers, one must begin with Amazon Prime, the company’s first ever
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22 ¹ *Amazon Net Worth 2006–2021* | AMZN, MACROTRENDS (last visited Jan. 19, 2022),
 23 <https://www.macrotrends.net/stocks/charts/AMZN/amazon/net-worth>.

24 ² Pamela N. Danzinger, *Amazon’s Astounding Customer Loyalty Is Astounding*, FORBES
 25 (Jan. 10, 2018), <https://www.forbes.com/sites/pamdanziger/2018/01/10/amazons-customer-loyalty-is-astounding/?sh=f42c81511fe3>.

1 membership program, unveiled in February 2005.³ At the program's inception, an annual
 2 membership fee of \$79 provided Prime members with unlimited two-day shipping at no
 3 extra cost and one-day shipping for \$3.99 per item.⁴ Currently, the cost of Prime
 4 membership is \$14.99 per month or \$139 annually.⁵ Although Amazon refers to this as "free
 5 shipping,"⁶ it is no such thing.

6 3. Shipping is not "free" for Prime members for at least two reasons. First, the
 7 Prime membership fee is really a monthly or annual shipping fee (depending on whether the
 8 consumer pays for membership monthly or annually): "The trick Amazon pulled off was to
 9 divorce shipping costs almost entirely from individual buying behavior *by charging an annual*
 10 *shipping fee*, then further camouflaging matters by making video-streaming services and the
 11 like part of the package."⁷ That the cost of shipping is included in the Prime membership fee
 12

13
 14 ³ *Amazon.com Announces Record Free Cash Flow Fueled by Lower Prices and Free Shipping;*
 15 *Introduces New Express Shipping Program – Amazon Prime*, BUSINESS WIRE (Feb. 2, 2005)
 (accessed via LEXISNEXIS).

16 ⁴ *Amazon.com Announces Record Free Cash Flow Fueled by Lower Prices and Free Shipping;*
 17 *Introduces New Express Shipping Program – Amazon Prime*, BUSINESS WIRE (Feb. 2, 2005)
 (accessed via LEXISNEXIS).

18 ⁵ *Amazon.com: Amazon Prime*, AMAZON.COM (last visited June 2, 2023),
 19 [https://www.amazon.com/amazonprime?ref_=nav_cs_primelink_nonmember#](https://www.amazon.com/amazonprime?ref_=nav_cs_primelink_nonmember#PricingModuleAnchor)
 20 [PricingModuleAnchor](https://www.amazon.com/amazonprime?ref_=nav_cs_primelink_nonmember#PricingModuleAnchor).

21 ⁶ *Amazon Prime Shipping Benefits*, AMAZON.COM (last visited June 2, 2023),
 22 [https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGPRQFCNV](https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGPRQFCNVUDYCBG24)
[UDYCBG24](https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGPRQFCNVUDYCBG24).

23 ⁷ Amanda Mull, *Stop Believing in Free Shipping: How retailers hide the costs of delivery—and*
 24 *why we're such suckers for their ploys*, THE ATLANTIC (Jan./Feb. 2020 issue) (emphasis added),
 25 *available at* [https://www.theatlantic.com/magazine/archive/2020/01/the-myth-of-free-](https://www.theatlantic.com/magazine/archive/2020/01/the-myth-of-free-shipping/603031/)
[shipping/603031/](https://www.theatlantic.com/magazine/archive/2020/01/the-myth-of-free-shipping/603031/)

1 is evidenced by the fact that, when Amazon raises the Prime membership fee, it regularly
 2 cites “rising shipping costs” as the reason for doing so.⁸

3 4. Second, shipping isn’t free for *any* Amazon customers because Amazon raises
 4 the prices of its products to subsidize so-called “free” shipping.⁹ Thus, those consumers who
 5 receive nominally “free” shipping—whether because they are Prime members or because
 6 their order contains over \$25 worth of “eligible items”¹⁰—are paying for shipping in the
 7 form of higher prices on the products they purchase from Amazon. Indeed, an empirical
 8 study found that “selecting Free One-Day Shipping while searching for an item as an
 9 Amazon Prime member causes the list price to be on average higher than the list price for
 10

11 ⁸ See, e.g., Alina Selyukh, *Amazon raises price of annual Prime membership to \$139*, NPR
 12 (Feb. 3, 2022) (“Amazon last raised the cost of membership four years ago, in 2018, when
 13 the annual fee rose to \$119 a year from \$99 and the monthly fee to \$12.99 from \$10.99. At
 14 the time, *company executives said the increase was due to rising shipping costs* and other
 15 expenses of the program.” (emphasis added)), [https://www.npr.org/2022/02/03/](https://www.npr.org/2022/02/03/1077088524/amazon-raises-price-of-annual-prime-membership-to-139)
 16 [1077088524/amazon-raises-price-of-annual-prime-membership-to-139](https://www.npr.org/2022/02/03/1077088524/amazon-raises-price-of-annual-prime-membership-to-139); Jeffrey Dastin and
 17 Nivedita Balu, *Amazon hikes Prime membership fees in U.S. as wages, costs rise*, REUTERS
 18 (Feb. 3, 2022) (“Amazon.com Inc on Thursday said it was raising the price of its annual U.S.
 19 Prime subscriptions by 17%, *as it looks to offset higher costs* for shipping and wages that it
 20 expects to persist this year.” (emphasis added)), [https://www.reuters.com/business/media-](https://www.reuters.com/business/media-telecom/amazon-hikes-prime-membership-fees-us-2022-02-03/)
 21 [telecom/amazon-hikes-prime-membership-fees-us-2022-02-03/](https://www.reuters.com/business/media-telecom/amazon-hikes-prime-membership-fees-us-2022-02-03/).

22 ⁹ See, e.g., Lisa Baertlein, *Amazon, other retailers revamp ‘free’ shipping as costs soar*, REUTERS
 23 (Mar. 24, 2023) (“It is an open secret that most retailers raise product prices to subsidize free
 24 shipping.”), [https://www.reuters.com/business/retail-consumer/amazon-other-retailers-](https://www.reuters.com/business/retail-consumer/amazon-other-retailers-revamp-free-shipping-costs-soar-2023-03-24/)
 25 [revamp-free-shipping-costs-soar-2023-03-24/](https://www.reuters.com/business/retail-consumer/amazon-other-retailers-revamp-free-shipping-costs-soar-2023-03-24/).

¹⁰ *Amazon.com: free shipping over \$25*, AMAZON.COM (last visited June 2, 2023), “How do I
 get free shipping on orders over \$25? Shipping is free if your order includes at least the stated
 minimum threshold of eligible items.”), [https://www.amazon.com/free-shipping-over-](https://www.amazon.com/free-shipping-over-25/s?k=free+shipping+over+%2425)
[25/s?k=free+shipping+over+%2425](https://www.amazon.com/free-shipping-over-25/s?k=free+shipping+over+%2425).

1 the same item for a non-Prime member,”¹¹ thus demonstrating that Amazon charges
 2 consumers for “free” shipping by raising the prices of the purchased items.

3 5. When Amazon Prime launched, Amazon CEO Jeff Bezos touted Prime as
 4 “all-you-can-eat express shipping.”¹² At the time, Amazon’s annual revenues were \$8.49
 5 billion¹³—only 2.2% of what they are today. Bezos assured investors that, “[t]hough
 6 expensive for the Company in the short-term,” Prime would pay off in the long-run because
 7 “it’s a significant benefit and more convenient for customers. With Amazon Prime, there’s
 8 no minimum purchase to think about, and no consolidating orders—two-day shipping
 9 becomes an everyday experience rather than an occasional indulgence.”¹⁴

10 6. Since its inception, Amazon Prime has been “the linchpin of [the company’s]
 11 growth strategy,” which is why 65% to 70% of all online retail transactions in the United
 12 States occur through Amazon.¹⁵ The staggering number of online retail transactions
 13 controlled by Amazon translates into Amazon’s having a 50% or higher share of U.S. retail
 14

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 16 ¹¹ Isabel Steffens, *Amazon Prime and “Free” Shipping* (June 22, 2018),
 17 <https://escholarship.org/uc/item/0681j9rr>.

18 ¹² *Amazon.com Announces Record Free Cash Flow Fueled by Lower Prices and Free Shipping;*
 19 *Introduces New Express Shipping Program – Amazon Prime*, BUSINESS WIRE (Feb. 2, 2005)
 (internal quotation marks omitted).

20 ¹³ Laurie J. Flynn, *In a Well-Worked Pattern, Amazon’s Revenue Rises and Its Profit Drops*,
 21 NY TIMES, at C4 (Feb. 2, 2007) (accessed via LEXISNEXIS).

22 ¹⁴ *Id.* (internal quotation marks omitted).

23 ¹⁵ *Investigation of Competition in Digital Markets*, Majority Staff Report and
 24 Recommendations, House Subcommittee on Antitrust, Commercial and Administrative
 25 Law of the Committee on the Judiciary, at 255 (Oct. 6, 2020) [hereinafter House
 Subcommittee Report], *available at* https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf.

1 e-commerce sales by dollar amount.¹⁶ The success of Amazon's strategy is further
 2 evidenced by the singular customer loyalty of Prime members,¹⁷ of which there are currently
 3 more than 140 million in the United States.¹⁸

4 7. The loyalty of Amazon customers is astounding: 96% of Prime members are
 5 more likely to buy products from Amazon than from other online retailers, and 89% of
 6 consumers who are *not* Prime members are more likely to make a purchase on Amazon.com
 7 than on any other e-commerce website.¹⁹

8 8. The "Prime Badge," which appears next to products on Amazon's website
 9 that are eligible for free, fast shipping to Prime members, conveys a powerful message to the
 10 142.5 million American consumers who currently pay \$14.99 per month (or \$139 annually)
 11 for Prime membership: "Trust us. It's authentic. It will get to your doorstep quickly, at no
 12 extra charge. You can buy it with a click."²⁰

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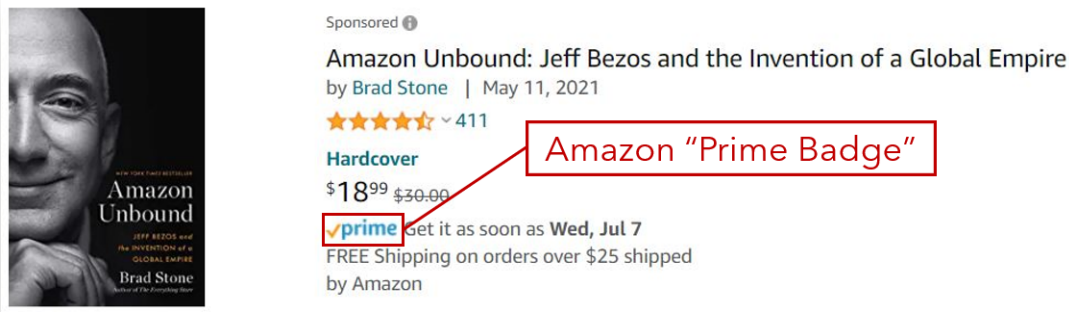
¹⁶ *Id.* at 254.

¹⁷ Danzinger, *supra* note 2.

¹⁸ *How Many People Have Amazon Prime*, 99 FIRMS (last visited Jan. 19, 2022),
<https://99firms.com/blog/how-many-people-have-amazon-prime>.

¹⁹ Kiri Masters, *89% Of Consumers Are More Likely To Buy Products From Amazon Than Other E-Commerce Sites: Study*, FORBES (Mar. 20, 2019), <https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/?sh=6471bf5b4af1>.

²⁰ Ron Knox & Shaoul Sussman, *How Amazon Used the Pandemic to Amass More Monopoly Power*, THE NATION (June 26, 2020), <https://www.thenation.com/article/politics/amazon-bezos-pandemic-monopoly/>.



9. As with traditional brick-and-mortar retail businesses, the biggest factor in running a successful business online is location. And Amazon has the most valuable online real estate for the millions of Sellers who offer their products through Amazon.com: the “Buy Box,” which is the section on the right side of an Amazon product detail page where customers can add a product to their cart or “buy now”:



1 10. The importance of the Buy Box to Sellers is evidenced by the fact that—rather
 2 than comparison shopping to see whether another Seller on Amazon’s website is offering a
 3 better deal on a product—90% of consumer purchases on Amazon’s website are made
 4 through the Buy Box.²¹ This is because Amazon has worked hard to create the impression
 5 with consumers that the product offer placed in front of them on Amazon.com—namely,
 6 the offer in the Buy Box—is the best deal on that product.

7 11. Unfortunately, this is not true for the many millions of Americans for whom
 8 the company’s website is the first and last stop for purchasing everything from a \$19.99
 9 package of baby diapers to a \$4,999 digital camera.

10 12. Amazon expanded, and ultimately entrenched, its dominant market power in
 11 online retail by sustaining losses for much of its first 20 years—losses that resulted from the
 12 company’s strategy of engaging in below-cost pricing to engender extreme customer loyalty
 13 and ensure that Amazon would become consumers’ one-stop-shop.²²

14 13. But Amazon’s ambitions lay far beyond *just* being the largest online retailer in
 15 the world. As Amazon’s market power in online retail grew, the company branched out to
 16 become (among other things) a marketing platform, a delivery and logistics network, a
 17 payment service, a credit lender, an auction house, a major book publisher, a producer of
 18 television and films, a fashion designer, a hardware manufacturer, and a leading provider of
 19 cloud server space and computing power.²³

20 14. To drive its aggressive efforts to expand into—and dominate—these and other
 21 markets, Amazon leveraged and exploited its most valuable asset: the immense brand

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 23 ²¹ Leanna Ziebak, *How to Win the Amazon Buy Box in 2021*, TINUITI (Mar. 25, 2020),
 24 <https://tinuiti.com/blog/amazon/win-amazon-buy-box/>.

25 ²² See Lisa M. Khan, *Amazon’s Antitrust Paradox*, 126 YALE L.J. 564, 747–53 (2017).

²³ *Id.* at 754.

1 loyalty of its customers. In doing so, Amazon both violated the antitrust laws and harmed
2 hundreds of millions of consumers.

3 15. In 2006, just one year after launching its Prime membership program
4 Amazon launched Fulfillment by Amazon (“Fulfillment services” or “FBA”), a logistics
5 service that provides warehousing, packing, and shipping to third-party sellers (“Sellers”),
6 who account for over 50% of the items purchased through Amazon.com.²⁴

7 16. From the inception of its Fulfillment services, Amazon’s goal was to
8 dominate the \$1.5 trillion-per-year shipping and logistics industry. Unlike e-commerce,
9 however, the “logistics [industry was] filled with worthy competitors that ha[d] dominated
10 the industry for a century”—FedEx, UPS, and the U.S. Postal Service.²⁵

11 17. The question for Amazon was how to quickly gain customers for its
12 Fulfillment services so that it could rapidly expand its logistics footprint.

13 18. The company’s answer to this question is emblematic of its ruthless and
14 anticompetitive business strategy: Amazon decided to simply force Sellers to purchase its
15 Fulfillment services.

16 19. This strategy was viable because of the immense power that Amazon has over
17 Sellers. Of the 2.3 million active third-party Sellers from around the world, about 37%—or
18 850,000—of Sellers “rely on Amazon as their sole source of income.”²⁶

20 ²⁴ Tugba Sabanoglu, *Percentage of paid units sold by third-party sellers on Amazon platform as*
21 *of 1st quarter 2021*, STATISTA (May 7, 2021), [https://www.statista.com/statistics/259782/](https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/)
22 [third-party-seller-share-of-amazon-platform/](https://www.statista.com/statistics/259782/third-party-seller-share-of-amazon-platform/).

23 ²⁵ Erica Pandey, *The race to dominate the \$1.5 trillion business of moving stuff*, AXIOS
24 (May 17, 2019), [https://www.axios.com/amazon-race-dominate-logistics-shipping-ups-](https://www.axios.com/amazon-race-dominate-logistics-shipping-ups-fedex-dhl-b652dbf0-abef-4505-9630-1107fdacb535.html)
25 [fedex-dhl-b652dbf0-abef-4505-9630-1107fdacb535.html](https://www.axios.com/amazon-race-dominate-logistics-shipping-ups-fedex-dhl-b652dbf0-abef-4505-9630-1107fdacb535.html).

²⁶ House Subcommittee Report, *supra* note 15, at 249.

1 20. The company's power over Sellers stems from its complete control over
2 whether a Seller's product is even *shown* to an Amazon shopper.

3 21. Amazon exercises this control through the Buy Box: products offered by
4 sellers with a Prime Badge are placed higher in Amazon's search results and are generally
5 the *only* products featured in the Buy Box, through which 90% of consumer purchases on
6 Amazon.com are made.

7 22. To force Sellers to switch to its Fulfillment services, Amazon conditioned a
8 Seller's access to the Prime Badge—and with it, placement in the Buy Box—on a Seller's
9 using Fulfillment by Amazon.

10 23. As documented in a report resulting from a year-long investigation by a
11 U.S. House Subcommittee ("House Subcommittee Report"), Sellers need a Prime Badge to
12 "maintain a favorable search result position, to reach Amazon's more than 112 million
13 Prime members, and to win the Buy Box,"²⁷ and purchasing "FBA is functionally the *only*
14 way for sellers to get the Prime Badge for their product listings."²⁸

15 24. In other words, Amazon has forced Sellers to buy its Fulfillment services by
16 designing its Buy Box algorithm so that "[t]he variable that has the greatest impact on the
17 Buy Box is the product's fulfillment method. Since Amazon considers its fulfillment service
18 to have perfect metrics across variables, using Fulfillment By Amazon (FBA) is the easiest
19 way to increase your chances of winning the Buy Box."²⁹

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22 ²⁷ House Subcommittee Report, *supra* note 15, at 288.

23 ²⁸ House Subcommittee Report, *supra* note 15, at 287 (emphasis added).

24 ²⁹ Eyal Lanxner, *The Amazon Buy Box: How It Works for Sellers, and Why It's So Important*,
25 BIGCOMMERCE (last visited Jan. 19, 2022), <https://www.bigcommerce.com/blog/win-amazon-buy-box/>.

25. Thus, if two Sellers—one of whom pays for Amazon’s Fulfillment services while the other doesn’t—offer the same product on Amazon.com, the Seller who pays Amazon for Fulfillment services will “win” the Buy Box and make the sale, even if the competing Seller offers a lower total price and faster, more reliable shipping.

26. In antitrust terms, Amazon’s forcing Sellers into purchasing its Fulfillment services constitutes an unlawful “tying arrangement.” Placement in the Buy Box is the “tying” product or service and Sellers are the “buyers.”³⁰ Access to the Buy Box is completely controlled by Amazon, and Amazon’s algorithm assures that only products with the Prime Badge are offered through the Buy Box. Fulfillment by Amazon is the “tied” product or service, which Sellers must purchase to obtain access to the Buy Box. In short, “Amazon is tying the outcomes it generates for sellers using its retail platform to whether they also use its delivery business.”³¹

27. Amazon’s anticompetitive conduct harms Sellers because it permits Amazon to charge “increased fees for compulsory fulfillment ... services.”³² As one Seller reported in a letter sent to federal lawmakers in 2019, “Amazon raised logistics fees by 20% over the [previous] four years until they cost as much as **35% more** than competing services.”³³

28. Amazon’s violation of the antitrust laws also has injured and continues to injure Plaintiffs and Class Members, who pay higher prices when shopping on Amazon.com than they would but for Amazon’s unlawful conduct. The higher prices inflicted on

³⁰ Technically, Amazon is limiting access to the Prime Badge. But the Prime Badge is what gains a Seller access to the Buy Box, where the sale is made.

³¹ Khan, *Amazon’s Antitrust Paradox*, *supra* note 22, at 779.

³² House Subcommittee Report, *supra* note 15, at 292.

³³ Spencer Soper, *Amazon Accused of Forcing Up Prices in Antitrust Complaint*, BLOOMBERG NEWS (Nov. 8, 2019) (emphasis added), <https://www.bloomberg.com/news/articles/2019-11-08/amazon-merchant-lays-out-antitrust-case-in-letter-to-congress>.

1 Plaintiffs and other consumers are a predictable and well-documented direct effect of
 2 Amazon’s anticompetitive conduct—one that is known to Amazon and Sellers, but is
 3 hidden from Amazon’s hundreds of millions of loyal customers.

4 29. Amazon’s unlawful tying arrangement harms both Sellers and consumers
 5 because Amazon’s Fulfillment services are “what economists call a ‘two-sided platform.’ As
 6 the name implies, a two-sided platform offers different products or services to two different
 7 groups who both depend on the platform to intermediate between them.”³⁴

8 30. Through its Fulfillment services, Amazon offers to Sellers the full suite of
 9 logistics services that the Sellers need to store and deliver their products to consumers:
 10 warehousing, packing, and shipping. And Sellers pay Amazon for those logistics services.

11 31. On the other side of the two-sided market, Amazon’s Fulfillment services
 12 offer consumers shipping. Prime members pay for that shipping through their Prime
 13 membership fee, which is really a monthly or annual shipping fee. And Prime and
 14 non-Prime members who purchase products that are “fulfilled” by Amazon pay for
 15 Fulfillment shipping; this is true even when the shipping is nominally “free” because
 16 Amazon raises the prices of its products to subsidize the so-called “free” shipping.

17 32. Amazon’s unlawful tying scheme directly leads to higher prices for consumers
 18 through several additional mechanisms.

19 33. First, the algorithm that is the linchpin of Amazon’s unlawful scheme gives
 20 the coveted Buy Box placement (the tying product) to products sold by Amazon and Sellers
 21 who use its Fulfillment services (the tied product), even when the identical product is offered
 22 for a lower total price and faster shipping by a Seller who controls its own handling and
 23 shipping—a practice that Amazon refers to as “Fulfillment by Merchant” or “FBM.”

24 _____
 25 ³⁴ *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2280 (2018) (internal citations omitted).

34. Because “[m]ost Amazon shoppers end up clicking ‘add to cart’ for the offer highlighted in the buy box”—again, 90% of purchases on Amazon.com are made through the Buy Box—consumers pay more than they would have absent Amazon’s anticompetitive scheme to leverage its power over e-commerce to conquer the logistics market.

35. Second, because an offer from a Seller who pays for Fulfillment by Amazon “wins” the Buy Box over an offer from a non-FBA Seller who offers the identical product for a lower price and with faster delivery, price competition among third-party Sellers on Amazon.com is greatly reduced. With the price competition among Sellers most likely to be featured in the Buy Box significantly diminished, items in the Buy Box are priced higher than they would be but for Amazon’s anticompetitive scheme. And because 90% of purchases on Amazon.com are made through the Buy Box, consumers pay higher prices than they would have absent Amazon’s market manipulation.

36. Third, Amazon charges more for Fulfillment by Amazon than its competitors in the logistics industry do for comparable services,³⁵ and Sellers increase prices to meet their margins. As one Seller reported to federal lawmakers, using “Amazon’s [Fulfillment] service forced him to boost prices by as much as 12% on more than 100 products he’s been selling on Amazon for years.”³⁶

37. Fourth, since many items on Amazon’s website are sold by both Amazon and its Sellers, the higher prices charged by Sellers who use Amazon’s Fulfillment services enable Amazon to price its products higher than it otherwise would have because its primary competitors—the Sellers on its platform—are charging higher prices as a result of

³⁵ See, e.g., Soper, *Amazon Accused of Forcing Up Prices*, *supra* note 33 (“The merchant’s letter says Amazon raised logistics fees by 20% over the past four years until they cost as much as 35% more than competing services.”).

³⁶ Soper, *Amazon Accused of Forcing Up Prices*, *supra* note 33.

1 Amazon's unlawful leveraging of its market power in e-commerce to take over the logistics
2 market.

3 38. Amazon is profiting handsomely from its unlawful tying scheme. Because a
4 Seller's revenues are directly tied to their purchasing Fulfillment by Amazon (effectively a
5 prerequisite for a Seller to appear in the Buy Box), Amazon can and does charge Sellers
6 supra-competitive prices for its Fulfillment services. And since Amazon's unlawful conduct
7 causes Sellers to increase prices, Amazon collects higher "referral fees"—in most cases, a
8 percentage of the total sales price³⁷—from Sellers. In addition, the higher prices that Sellers
9 must charge to pay for Fulfillment services and meet their margins allow Amazon to charge
10 higher prices than it could but for its unlawful conduct.

11 39. The economic harm that Amazon's scheme has inflicted on consumers is
12 difficult to overstate. Approximately \$197 billion in products was sold *by Amazon alone*
13 through Amazon's website in 2020.³⁸ This does not include the products sold by Sellers,
14 who in 2020 accounted for 52% of products sold on Amazon.com.³⁹

20 ³⁷ In most cases, the referral fees that Amazon collects from Sellers are a percentage of
21 the total sales price. *See Selling on Amazon Fee Schedule*, AMAZON (last visited Jan. 19, 2022),
22 <https://sellercentral.amazon.com/gp/help/external/200336920>.

23 ³⁸ Amazon.com, Inc. Form 10-K for Fiscal Year Ending on December 31, 2020.

24 ³⁹ Fareeha Ali, *What percentage of products on Amazon are sold by marketplace sellers?*,
25 DIGITAL COMMERCE 360 (Apr. 29, 2021), <https://www.digitalcommerce360.com/2021/04/29/what-percentage-of-products-on-amazon-are-sold-by-marketplace-sellers/>.

40. Given that Amazon takes 30% of Sellers' revenues in the form of fees⁴⁰ and that these fees garnered the company \$80.46 billion dollars in U.S. sales in 2020,⁴¹ consumers purchase approximately \$268 billion from third-party Sellers through Amazon.com last year.⁴² This brings the total that shoppers spent on Amazon.com in 2020 to approximately \$465 billion—the \$197 billion spent on products sold by Amazon plus the \$268 billion spent on products sold by Sellers.

41. Amazon has forced the vast majority of Sellers to purchase its Fulfillment services. As a result, 73% of all Sellers now use Fulfillment by Amazon.⁴³ The Buy Box, through which 90% of purchases on Amazon.com are made, presents consumers with offers from Amazon or FBA Sellers.

42. The Seller who complained to federal lawmakers reported as much as a 12% increase in his prices as a result of Amazon's unlawful conduct. Assuming that, but for Amazon's anticompetitive conduct, the prices of items purchased through the Buy Box were on average higher by even a tenth of what this Seller reported (i.e., 1.2% higher)—a conservative estimate given that Amazon takes 30% Seller revenues in fees—**Amazon's**

⁴⁰ Stacy Mitchell, Ron Know & Zach Freed, *Amazon's Monopoly Tollbooth 3*, INSTITUTE FOR LOCAL SELF-RELIANCE (July 2020), available at https://ilsr.org/wp-content/uploads/2020/07/ILSR_Report_AmazonTollbooth_Final.pdf.

⁴¹ Daniela Coppola, *Annual net revenue of Amazon from 2006 to 2020, by segment*, STATISTA (July 7, 2021), <https://www.statista.com/statistics/266289/net-revenue-of-amazon-by-region/>.

⁴² \$80.46 billion ÷ 0.30 = \$268.2 billion.

⁴³ House Subcommittee Report, *supra* note 15, at 288, 290 (stating that 73% of all Sellers use Amazon's Fulfillment services, even though many Sellers would prefer to use other logistics companies to warehouse, package, and ship their products).

1 **violations of the antitrust laws overcharged consumers by approximately \$5 billion in**
 2 **2020 alone**, and billions of dollars more over the preceding years.

3 43. Amazon's leveraging of its market power in e-commerce to attain dominance
 4 in the logistics market violates both Sections 1 and 2 of the Sherman Act (15 U.S.C. §§ 1, 2).

5 44. Amazon's tying arrangement is a *per se* violation of Section 1 of the Sherman
 6 Act because Amazon has significant—indeed, monopoly-level—power over the Prime
 7 Badge, the Buy Box, and e-commerce generally, and Amazon uses that power to force
 8 Sellers into purchasing Amazon's Fulfillment services.

9 45. Amazon's conduct also violates Section 2 of the Sherman Act because
 10 (i) Amazon has monopoly-level power in several markets—the U.S. online retail-goods
 11 market and the market for favorable Seller placement on the Amazon website (i.e., the
 12 granting of the Prime badge, which garners higher placement in search results and access to
 13 the Buy Box)—and (ii) Amazon has used that monopoly-level power to foreclose
 14 competition, to gain advantage, and to destroy competitors in the market for the
 15 warehousing, packing, and shipping of retail goods to consumers.

16 46. In sum, Amazon's unlawful use of its monopoly-level power has given it an
 17 edge in the logistics market, forced Sellers to pay supra-competitive prices for Fulfillment
 18 services, and increased prices for Plaintiffs and other consumers who shop on Amazon.com.
 19 Amazon's unlawful tying scheme harms hundreds of thousands of businesses and hundreds
 20 of millions of consumers. The only winner is Amazon, which earns billions as a result of its
 21 anticompetitive conduct while continuing to gain economic power in all markets it enters.
 22
 23
 24
 25

II. PARTIES

47. Plaintiff Angela Hogan is a natural person and a citizen of the State of Illinois. Ms. Hogan has had an Amazon Prime membership for the majority of the past seven years. During that time, she has made numerous purchases through Amazon.com. Ms. Hogan made her purchases almost exclusively through the Buy Box. She purchased items from Amazon and third-party Sellers, and the items she purchased from the Buy Box were generally shipped by Amazon's Fulfillment services. Thus, Ms. Hogan paid for Amazon's nominally "free" shipping by paying higher prices for the items she purchased than she would have but for Amazon's anticompetitive conduct. In the past year alone, Ms. Hogan has made dozens of purchases through Amazon.com, including but not limited to, purchases of skin care products, shampoo, consumer electronics, clothing, children's toys, child-proof cabinet locks, stroller accessories, bedding, kitchen supplies, eating utensils, drinkware, skateboarding equipment, and jewelry. Ms. Hogan was injured by Amazon because, as a direct result of Amazon's anticompetitive actions, she was overcharged for the numerous items she purchased through the Buy Box.

48. Plaintiff Andrea Seberson is a natural person and a citizen of the State of Minnesota. Ms. Seberson has had an Amazon Prime membership for a number of years. During that time, she made numerous purchases through Amazon.com. Ms. Seberson made her purchases almost exclusively through the Buy Box. She purchased items from Amazon and third-party Sellers, and the items she purchased from the Buy Box were generally shipped by Amazon's Fulfillment services. Thus, Ms. Seberson paid for Amazon's nominally "free" shipping by paying higher prices for the items she purchased than she would have but for Amazon's anticompetitive conduct. In the past year alone, Ms. Seberson has made dozens of purchases through Amazon.com, including, but not limited to,

1 purchases of books, movies, electronics, clothing, household goods, pet care supplies,
 2 personal care supplies, bedding, home décor, paddle boards, camping equipment, bathroom
 3 plumbing parts, tools, lighting, food, small appliances, cooking utensils, and garden
 4 supplies. Ms. Seberson was injured by Amazon because, as a direct result of Amazon's
 5 anticompetitive actions, she was overcharged for the numerous items she purchased through
 6 the Buy Box.

7 49. Defendant Amazon.com, Inc. is a Delaware corporation with a principal
 8 place of business at 410 Terry Avenue North, Seattle, Washington 98109-5210. At all
 9 relevant times, Amazon advertised, marketed, promoted, offered for sale, and sold goods
 10 throughout the United States, including in this District.

11 12 **III. JURISDICTION AND VENUE**

13 50. This action arises under Sections 1 and 2 of the Sherman Act (15 U.S.C.
 14 §§ 1, 2), Section 4 of the Clayton Act (15 U.S.C. § 15(a)), and Section 16 of the Clayton Act
 15 (15 U.S.C. § 26). Plaintiffs seek damages for their injuries, as well as for injuries suffered by
 16 Class Members, resulting from Amazon's anticompetitive conduct. Plaintiffs also seek an
 17 injunction to prohibit Amazon from continuing its unlawful conduct. This Court has subject
 18 matter jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1332 (diversity),
 19 28 U.S.C. § 1337(a) (antitrust), and 15 U.S.C. § 15 (antitrust).

20 51. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because
 21 Defendant Amazon maintains its corporate headquarters and principal place of business in
 22 this District, transacts business within this District, and carries out interstate trade and
 23 commerce in this district. Venue also is appropriate in this District under Section 12 of the
 24 Clayton Act, 15 U.S.C. § 22 (nationwide venue for antitrust matters).

IV. FACTUAL ALLEGATIONS

A. Unchecked Growth: It's Always Day 1 at Amazon⁴⁴

1. Amazon's Prime Strategy of Losing Money to Make Money

52. Amazon is a behemoth in numerous markets: e-commerce, consumer electronics, television and film production, groceries, cloud services, book publishing, and logistics.⁴⁵ In 2020 alone, Amazon's revenues were more than \$386 billion, from which Amazon reaped a profit of \$21.3 billion.⁴⁶

53. As of late 2020, Amazon had a 50% or higher share of U.S. retail e-commerce.⁴⁷ Over the past 5 years, Amazon's share of U.S. retail e-commerce has grown an average of 8% per year.⁴⁸ If Amazon keeps gaining market share at this rate for the next 5 years—and there is no indication that Amazon's rapacious growth is slowing down—the company will control 73.5% of the U.S. retail e-commerce market by 2026.

⁴⁴ In his first letter to shareholders in 1997, Jeff Bezos wrote, "this is Day 1 for the Internet and, if we execute well, for Amazon.com." Jeff Bezos, *Amazon's original 1997 letter to shareholders* (last visited Jan. 19, 2022), <https://www.aboutamazon.com/news/company-news/amazons-original-1997-letter-to-shareholders>. "Day 1" means "energy and dynamism"—"mak[ing] high-quality, *high-velocity* decisions." Jeff Bezos, *2016 Letter to Shareholders* (last visited Jan. 19, 2022), <https://www.aboutamazon.com/news/company-news/2016-letter-to-shareholders>. In contrast, "Day 2 is stasis. Followed by irrelevance. Followed by excruciating, painful decline. Followed by death. And that is why it is always Day 1." *Id.* (internal quotation marks omitted).

⁴⁵ House Subcommittee Report, *supra* note 15, at 247.

⁴⁶ *Amazon Company Profile*, FORTUNE 500 (last visited Jan. 19, 2022), <https://fortune.com/company/amazon-com/fortune500/>.

⁴⁷ House Subcommittee Report, *supra* note 15, at 254.

⁴⁸ Stephanie Chevalier, *Projected retail e-commerce GMV share of Amazon in the United States from 2016 to 2021*, STATISTA (July 7, 2021), <https://www.statista.com/statistics/788109/amazon-retail-market-share-usa/>.

1 54. How is this possible, given that during Amazon’s first 20 years in business,
2 Amazon “generated a positive net income in just over half of its financial reporting
3 quarters,” and even in the profitable quarters, “its margins were razor-thin”?⁴⁹

4 55. As Lisa Khan, now the Chair of the FTC, wrote in her seminal article
5 *Amazon’s Antitrust Paradox*, Amazon established its “dominance as an online platform thanks
6 to two elements of its business strategy: [i] a willingness to sustain losses and invest
7 aggressively at the expense of profits, and [ii] integration across multiple business lines.”⁵⁰

8 56. By 1997, it was clear from Bezos’s own statements that “the premise of
9 Amazon’s business model was to establish scale,” and “[t]o achieve scale, the company
10 prioritized growth”:⁵¹

11 **[Interviewer]:** In your prospectus you say, “The Company’s view ...
12 is that it will incur substantial losses for the foreseeable future.”

13 **Bezos:** We’re not just covering ourselves. We’re disclosing the facts of
14 the situation. We’re going to be unprofitable for a long time. And
15 that’s our strategy.

16 **[Interviewer]:** Presumably, at some point you probably don’t want to
17 be showing a loss.

18 **Bezos:** Long term, the only way companies generate value is by
19 making profits.

20 **[Interviewer]:** Are there things that need to happen for you to reach
21 that point?

22 **Bezos:** Only one. *The key thing is sales growth.*

23 ⁴⁹ Khan, *Amazon’s Antitrust Paradox*, *supra* note 22, at 747.

24 ⁵⁰ Khan, *Amazon’s Antitrust Paradox*, *supra* note 22, at 746–47.

25 ⁵¹ Khan, *Amazon’s Antitrust Paradox*, *supra* note 22, at 749.

1 **[Interviewer]:** *But your sales must grow faster than what you spend to*
 2 *get them, right?*

3 **Bezos:** *No, it's not the rate of growth. It's achieving a certain scale.*⁵²

4 57. As Bezos's statements show, "aggressive investing would be key [to
 5 Amazon's success], even if that involved slashing prices or spending billions on expanding
 6 capacity, in order to become consumers' one-stop-shop."⁵³

7 58. Enter Amazon Prime. While the initial benefit of Prime membership was
 8 unlimited two-day shipping, since the program's inception in 2006, Amazon has bundled in
 9 numerous other benefits, such as special deals and discounts, 2-hour grocery delivery
 10 through Whole Foods Market and Amazon Fresh, unlimited streaming of movies and TV
 11 shows through Prime Video, access to over two million songs through Prime Music,
 12 unlimited photo storage through Amazon Photos, and free two-day delivery and discounts
 13 when filling a medication prescription through Amazon Pharmacy.⁵⁴

14 59. Initially, Amazon did not make money from its Prime program, but the
 15 company was "willing to lose hundreds of millions of dollars a year on" Prime "because the
 16 service create[d] loyalty to the company."⁵⁵ As an Amazon employee who worked on Prime
 17
 18
 19

20 ⁵² Jeffrey L. Seglin, *Hot strategy: 'Be unprofitable for a long time,'* ABI/INFORM (Sept. 1,
 21 1997) (accessed via LEXISNEXIS) (emphasis added).

22 ⁵³ Khan, *Amazon's Antitrust Paradox*, *supra* note 22, at 749.

23 ⁵⁴ Zoe Malin, *What is Amazon Prime? Membership benefits, prices and more*, NBC NEWS
 24 (June 22, 2021), <https://www.nbcnews.com/shopping/amazon-prime-day/amazon-prime-benefits-cost-n1269672>.

25 ⁵⁵ Steve Woo, *Amazon 'Primes' Pump for Loyalty*, WALL STREET JOURNAL (Nov. 14,
 2011), <https://www.wsj.com/articles/SB10001424052970203503204577036102353359784>.

1 explained: “It was never about the \$79. It was really about changing people’s mentality so
2 *they wouldn’t shop anywhere else.*”⁵⁶

3 60. Amazon’s strategy of operating the Prime program at a loss paid off,
4 generating extraordinary customer loyalty. One 2020 survey of American consumers found
5 that, despite 24% of respondents “hav[ing] negative feelings about Amazon’s impact on the
6 retail industry,” 47% of Americans nonetheless “do at least a quarter of their shopping on
7 Amazon,” and 23% of respondents “buy more than half of all their goods on the site.”⁵⁷
8 Moreover, the survey showed that “[f]ast and free shipping [i.e., Prime shipping] is far and
9 away the top reason people shop at Amazon, selected by 80% of respondents.”⁵⁸

10 61. Loyalty to Amazon is especially strong among Prime members, who account
11 for the vast majority of sales on Amazon.com.⁵⁹ As the House Subcommittee Report found,
12 Prime members are so loyal that they are not sensitive to price increases:

13 Once Prime members pay the upfront annual membership fee, they
14 are likely to concentrate their online purchases with Amazon As
15

16 ⁵⁶ Khan, *Amazon’s Antitrust Paradox*, *supra* note 22, at 752–53 (citation omitted).

17 ⁵⁷ *New Consumer Survey from Convey Reveals Mixed Feelings About Amazon – Even As Fast,*
18 *Free Shipping Proves Irresistible*, BUSINESS WIRE (Feb. 5, 2020) (emphasis added)
19 [https://www.businesswire.com/news/home/20200205005457/en/New-Consumer-](https://www.businesswire.com/news/home/20200205005457/en/New-Consumer-Survey-from-Convey-Reveals-Mixed-Feelings-About-Amazon-%E2%80%93-Even-As-Fast-Free-Shipping-Proves-Irresistible)
20 [Survey-from-Convey-Reveals-Mixed-Feelings-About-Amazon-%E2%80%93-Even-As-Fast-](https://www.businesswire.com/news/home/20200205005457/en/New-Consumer-Survey-from-Convey-Reveals-Mixed-Feelings-About-Amazon-%E2%80%93-Even-As-Fast-Free-Shipping-Proves-Irresistible)
21 [Free-Shipping-Proves-Irresistible.](https://www.businesswire.com/news/home/20200205005457/en/New-Consumer-Survey-from-Convey-Reveals-Mixed-Feelings-About-Amazon-%E2%80%93-Even-As-Fast-Free-Shipping-Proves-Irresistible)

22 ⁵⁸ *Id.*

23 ⁵⁹ Most people who purchase items through Amazon are Amazon Prime members,
24 *see* Tugba Sabanoglu, *Number of Amazon Prime users in the United States from 2017 to 2022*,
25 STATISTA (Dec. 1, 2020) (showing that there were 142.5 million Prime members in United
States in 2020), and Prime members also account for the vast majority of sales through
Amazon, “spend[ing] an average of \$1,400 annually on Amazon, versus \$600 [spent
annually by] non-members.” House Subcommittee Report, *supra* note 15, at 260.

one market participant observed, “Prime members will continue to use Amazon and not switch to competing platforms, *despite higher prices and lower-quality items on Amazon* compared to other marketplaces, *and despite recent increases in the price of a Prime membership.*”⁶⁰

62. This is in large part because Amazon creates the false impression that it is giving consumers not only the best shipping but also the best price:

Amazon loyalists shop on Amazon.com trusting that they are getting a bargain. . . . [I]t’s this perception of low pricing that helps make shopping on Amazon almost instinctual to many consumers. It’s this perception that keeps Amazon shoppers from checking other sites for lower pricing before hitting the “Place Your Order” button. It makes retail shoppers check their Amazon app before heading to the register. It’s enough to convince folks to make purchases with just an Alexa voice command or a Dash button-push without concern for how little visibility they have into actual market pricing.⁶¹

2. The Buy Box Trains Consumers to Click Without Thinking

63. Consumers’ trust in Amazon extends to the Buy Box.

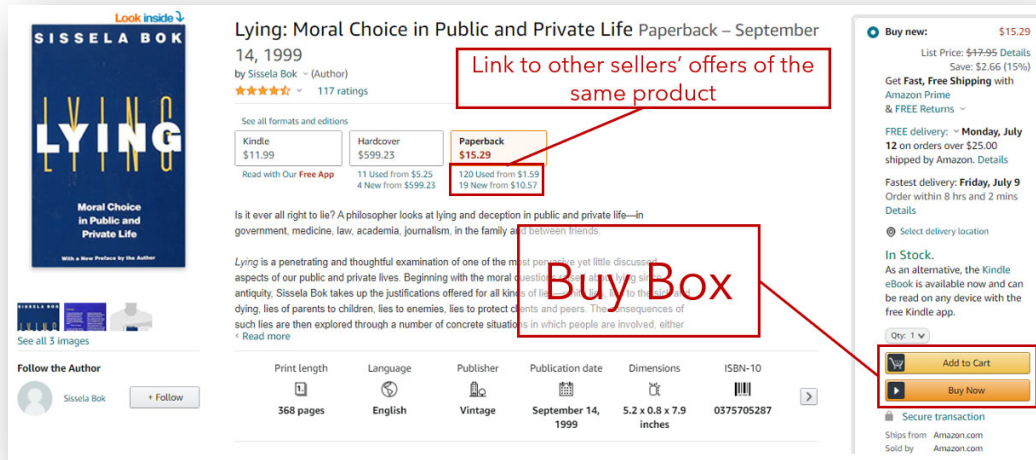
64. Amazon’s e-commerce platform allows multiple Sellers to offer the same product; in some cases Amazon offers the product as well.⁶² The Buy Box enables one-stop single-click shopping, eliminating the need for consumers to comparison shop.

⁶⁰ House Subcommittee Report, *supra* note 15, at 260 (emphasis added);

⁶¹ Jake Fishman, *Amazon, the Price Perception Leader*, GAP INTELLIGENCE (Sept. 7, 2017), <https://www.gapintelligence.com/blog/amazon-com-the-price-perception-leader/>.

⁶² House Subcommittee Report, *supra* note 15, at 249.

65. When a consumer clicks on a link to a product on Amazon's site, the consumer is taken to the product page, and an algorithm controlled by Amazon "chooses a single seller from all the vendors offering that product to display as the featured offer in the 'Buy Box'".⁶³



66. Amazon Marketplace—the market through which third party Sellers offer their goods—"is so well integrated into Amazon.com [that] a lot of customers don't even realize they are [sometimes] purchasing from third party sellers" when they make a purchase through the Buy Box.⁶⁴

⁶³ House Subcommittee Report, *supra* note 15, at 249.

⁶⁴ Sophia Spiridakis, *What Is Amazon Marketplace? Everything You Need to Know About the Platform*, SELLER'S CHOICE (Mar. 20, 2020), <https://www.sellerschoice.digital/blog/what-amazon-marketplace>; see also Dave Hamrick, *How to Win the Amazon Buy Box*, JUNGLE SCOUT (Jan. 4, 2021) ("Ultimately, the Buy Box facilitates a low-friction sale on Amazon by enabling shoppers to make their purchase quickly and easily, within just two or three steps. But, what most consumers don't realize is that the Buy Box is separate from the listing itself and sellers compete for ownership of the widget."), <https://www.junglescout.com/blog/how-to-win-the-buy-box/>.

67. Because 90% of consumer purchases on Amazon's website are made through the Buy Box,⁶⁵ being featured in the Buy Box is extremely important to Sellers.⁶⁶

Amazon generates over \$250 billion in sales every year. Of those conversions, over 90% occur using Amazon's buy box.

If you want to increase your Amazon sales, winning the buy box on the product detail page is pivotal. Retailers featured on Amazon's buy box sell more products. We all know this.

68. Another analyst provides a succinct yet comprehensive statement of the value of the Buy Box to Sellers.⁶⁷

Why is the Buy Box important for Amazon sellers?

There are two main reasons why you should be concerned about the Buy Box.

1. Owning the Buy Box increases your chances of making a sale.

Nearly all Amazon purchases are made through the Buy Box, as it is the first 'call to action' shoppers see.

However, even though the Buy Box gives information on who is selling and fulfilling the product, it's unlikely that these factor into a customer's decision to buy.

The convenience of the Buy Box's placement is often enough to generate a sale.

2. If you own the Buy Box, you can create Amazon PPC ads.

Amazon PPC (pay-per-click) allows sellers to bid on prices of clicks for certain keywords, and sellers who control the Buy Box can create sponsored listings for the product through Amazon PPC.

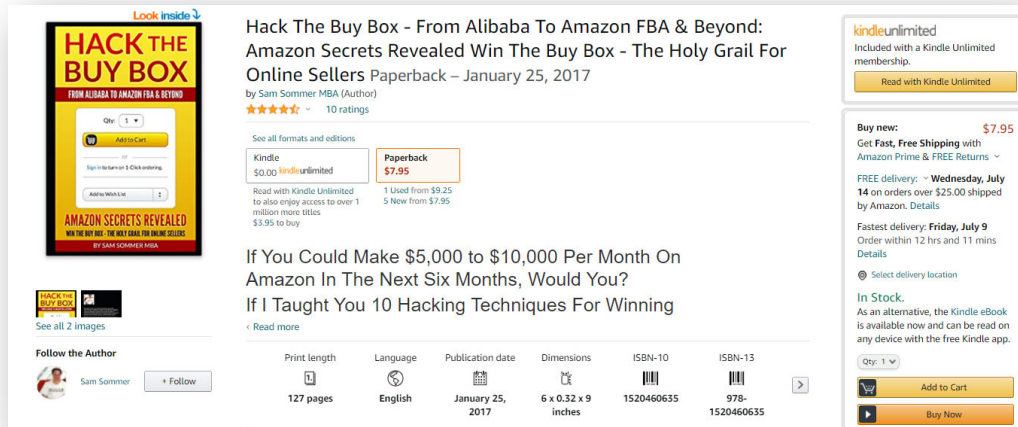
But, if you do *not* own the Buy Box — even if it is on your own listing — you can't create ads for the product.

⁶⁵ Ziebak, *How to Win the Amazon Buy Box in 2021*, *supra* note 21.

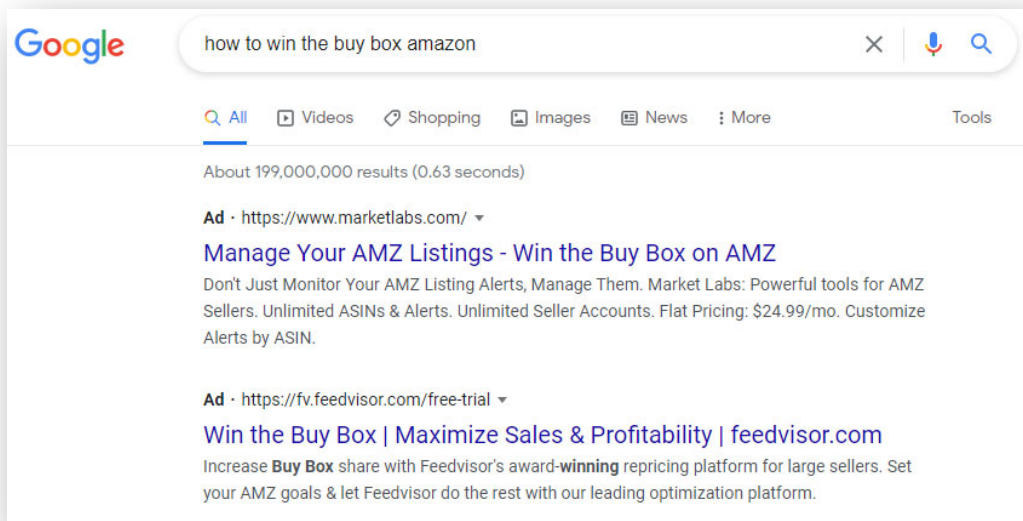
⁶⁶ Ziebak, *How to Win the Amazon Buy Box in 2021*, *supra* note 21.

⁶⁷ Dave Hamrick, *How to Win the Amazon Buy Box*, *supra* note 64.

69. The importance of “winning the Buy Box” to a Seller’s bottom line cannot be overstated. The advantage to a Seller of their product appearing in the Buy Box is so well known that books have been written on the topic:



70. Thousands if not millions of blog posts and articles analyze the Buy Box or give Sellers tips on how to win it. A Google search for “how to win the buy box Amazon” yields nearly 200 million results:



1 71. So how does Amazon's algorithm determine which Seller wins the Buy Box?

2 72. Amazon represents that, to win the Buy Box, a Seller must (i) "have a
3 Professional selling account"⁶⁸ (ii) "[p]rice [its] items competitively," (iii) "[o]ffer faster
4 shipping and free shipping," (iv) "[p]rovide great customer service," and (v) "[k]eep stock
5 available."⁶⁹

6 73. Conspicuously missing from Amazon's list is the most important factor for
7 winning the Buy Box: a Seller's paying Amazon for its Fulfillment services.

8 **B. Fulfillment by Amazon: How to Win Markets and Influence Sellers**

9 74. As stated in the Introduction, from its inception Amazon's aspirations were
10 never constrained to being the largest online book retailer or even the largest retailer. From
11 the beginning, Amazon's goal was to dominate numerous sectors of the U.S. economy.

12 75. Amazon's modus operandi for achieving this goal is illustrated by its strategy
13 for building a logistics empire:

- 14 (i) Invest heavily in online retail, initially operating at a loss to
15 quickly achieve scale.
- 16 (ii) Undercut competitors' prices and offer free shipping through
17 Prime to engender customer loyalty and make Amazon the
18 consumer's one-stop-shop.

21 ⁶⁸ *Featured Offer eligibility*, AMAZON SELLER CENTRAL (last visited Jan. 19, 2022),
22 [https://sellercentral.amazon.com/gp/help/external/200418100?language=en-](https://sellercentral.amazon.com/gp/help/external/200418100?language=en-US&ref=efph_200418100_cont_201687550)
23 [US&ref=efph_200418100_cont_201687550](https://sellercentral.amazon.com/gp/help/external/200418100?language=en-US&ref=efph_200418100_cont_201687550).

24 ⁶⁹ *Becoming the Featured Offer*, AMAZON SELLER CENTRAL (last visited Jan. 19, 2022),
25 https://sellercentral.amazon.com/gp/help/external/help.html?itemID=201687550&language=en-US&ref=efph_201687550_cont_37911.

(iii) Once scale and customer loyalty are attained, “leverage[] its dominance over online shopping and its captive audience of sellers to rapidly become a huge player in package delivery” and “finance[ing] the necessary infrastructure on the backs of sellers.”⁷⁰

76. Amazon’s business strategy echoes Archimedes’ statement that, given the right lever and “a firm place to stand,” he could “move the earth.”⁷¹

77. The first two steps of Amazon’s strategy had been implemented by 2006, when Amazon launched Fulfillment by Amazon, its logistics business which provides warehousing, packing, and shipping services.

78. Amazon touted its Fulfillment services as a boon for both consumers and “small and medium-sized” Sellers:

“We created Fulfillment by Amazon because it is good for Amazon.com customers, and therefore, great for our third-party sellers,” said Joe Walowski, Product Manager, Fulfillment by Amazon. “With membership in Amazon Prime growing every day, more and more Amazon.com customers want a great deal on shipping and to receive their orders quickly. Fulfillment by Amazon makes it possible for sellers to offer Amazon.com customers this convenience.”⁷²

⁷⁰ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 8.

⁷¹ ENCARTA BOOK OF QUOTATIONS 31 (2000).

⁷² *Amazon Launches New Services to Help Small and Medium-Sized Businesses Enhance Their Customer Offerings by Accessing Amazon’s Order Fulfillment, Customer Service, and Website Functionality*, BUSINESS WIRE (Sept. 19, 2006) (accessed via LEXISNEXIS).

1 79. In the early days of Fulfillment by Amazon, there were indications that some
2 Sellers felt that they were benefiting from Amazon's Fulfillment services.⁷³

3 80. But Sellers' excitement about Amazon's Fulfillment services was short-lived
4 as it became clear that Amazon planned to build its logistics empire on the backs of Sellers
5 in two ways.

6 81. First, Amazon conditioned Sellers' ability to obtain a Prime Badge—and with
7 it, the coveted Buy Box placement—on a Sellers' purchasing Amazon's Fulfillment services.

8 82. Second, once Sellers were completely reliant on Amazon for logistics,
9 Amazon continually increased the fees that Sellers paid for Fulfillment services in order to
10 fund its expansion in the logistics market.

11 **1. Amazon ties Sellers' access to the Buy Box on their paying Amazon for its**
12 **Fulfillment services.**

13 83. Amazon's tying scheme—expanding its logistics business by forcing Sellers to
14 pay for Fulfillment by Amazon as a condition of gaining access to the Buy Box—has long
15 been known to industry insiders and analysts, but consumers have for the most part
16 remained in the dark.

17 84. The tie between a Seller's offer being listed in the Buy Box (which requires
18 that the Seller have a Prime Badge) and Fulfillment by Amazon also is well known to
19 lawmakers. As the House Subcommittee Report puts it:

20 ⁷³ See generally Brad Stone, *Sold on eBay, Shipped by Amazon.com*, THE NEW YORK TIMES,
21 at C-1 (Apr. 27, 2007) (accessed via LEXISNEXIS) ("The program has some enthusiastic
22 early customers. Barry Mark, who runs Treebeard Books from his home in Palm Beach
23 County, Fla., buys surplus books and sells them on Amazon and other sites. Since he signed
24 up for Fulfillment by Amazon last September, he says that his sales have jumped more than
25 30 percent, and a third of the orders that come in are from members of Amazon Prime, the
company's premium discount shipping program.").

1 There is a strong link between Amazon Marketplace and Fulfillment
 2 by Amazon (FBA), Amazon's paid logistics service. Amazon uses its
 3 dominance in each of these markets to strengthen and reinforce its
 4 position in the other.

5 Amazon's FBA program combines warehousing, packing, and
 6 shipping services, and most importantly, access to Prime customers.

7 ...

8 FBA is functionally the *only* way for sellers to get the Prime Badge for
 9 their product listings.⁷⁴

10 85. Numerous articles and blog posts (some by Sellers themselves) provide
 11 support for the House Subcommittee Report's conclusion that Amazon exercises its market
 12 power in e-commerce to force Sellers to pay for its Fulfillment services:

13 +L, "The variable that has the greatest impact on the Buy Box is the
 14 product's fulfillment method. Since Amazon considers its
 15 fulfillment service to have perfect metrics across variables, using
 16 Fulfillment By Amazon (FBA) is the easiest way to increase your
 17 chances of winning the Buy Box."⁷⁵

18 +LL, "Amazon favours FBA sellers, by making it easier to win the buy
 19 box if you use their distribution network."⁷⁶

21
 22 ⁷⁴ House Subcommittee Report, *supra* note 15, at 287 (emphasis added).

23 ⁷⁵ Lanxner, *The Amazon Buy Box*, *supra* note 29.

24 ⁷⁶ *Hacking the Buy Box – Understanding Amazon's Buy Box Eligibility & Algorithm*,
 25 MUSEMINDED (Dec. 3, 2019), <https://museminded.com/how-to-win-the-amazon-buy-box/>.

1 +lll, “The simplest way to sell on Amazon Prime is to join Amazon
2 FBA, a highly automated and powerful fulfillment network. You
3 send your product inventory to Amazon, and they store it in their
4 warehouses. When a customer places an order through your listing,
5 Amazon picks it, packs it, and ships it. Once your products are in
6 FBA, they automatically get the Prime Badge.”⁷⁷

7 +ly, “When you’re FBM [fulfilled by merchant], you’re not eligible for
8 the Amazon Prime Badge, which is tied directly to Amazon’s
9 organic ranking algorithm.”⁷⁸

10 +y, “The easiest way to sell Amazon Prime is to use FBA as your
11 fulfillment method. Regardless of your business model, by joining
12 Amazon as an FBA seller your products will automatically be
13 considered for Amazon Prime. ... From a ready-to-buy customer
14 base to an increased chance of winning the Buy Box, there are many
15 benefits to selling Amazon Prime.”⁷⁹

16 86. The 2020 House Subcommittee Report presents further compelling evidence
17 that Sellers were coerced by Amazon into purchasing Fulfillment services to gain access to
18 the Buy Box, even when the Sellers found Amazon’s Fulfillment services to be of *lower*
19 *quality* than the warehousing, packing, and shipping services offered by competitors:

20 ⁷⁷ Michael Burns, *How to Sell on Amazon Prime: 3 Ways to Get the Prime Badge*,
21 WEBRETAILER (Apr. 29, 2020) (emphasis added), <https://www.webretailer.com/b/how-to-sell-on-amazon-prime/>.

22 ⁷⁸ Nick Cotter, *Amazon FBM and Seller Fulfilled Prime (SFP): How-to Guide*, TINUITI
23 (June 16, 2020), <https://tinuiti.com/blog/amazon/amazon-fbm/>.

24 ⁷⁹ Regan McPhee, *How to sell on Amazon Prime in 2021*, JUNGLESCOUT (May 27, 2020),
25 <https://www.junglescout.com/blog/how-to-sell-on-amazon-prime/>.

+L, “One third-party seller provided the Subcommittee with anecdotal evidence that Amazon favors sellers who participate in Amazon’s fulfillment program over sellers who do not. The seller set up an experiment where he sold the same product, one self-fulfilled and the other fulfilled through FBA, and ran different test cases. The seller found that ‘Even when the consumer price of the self-fulfilled order was reduced and sold for a lower price (7% lower) than the FBA offer, the FBA still “won” the “Buy Box.”’ The seller indicated that, without this favorable treatment for FBA, they would not choose to use FBA, as they found **Amazon’s fulfillment service was often slower and less reliable than self-fulfillment.**”⁸⁰

+LL, “One third-party seller told Subcommittee staff, ‘We use both FBA and self-fulfillment, **all of our negative comments are on items shipped through FBA.**’”⁸¹

+LLL, “A competing online marketplace described how Amazon effectively forcing sellers into its FBA program makes it more difficult to compete with Amazon for sellers It ... explained that because of Amazon’s dominance in online commerce, ‘Even sellers who sell on other marketplaces are pushed into FBA, because it is the only practicable way to obtain sales on the Amazon marketplace.’”⁸²

⁸⁰ House Subcommittee Report, *supra* note 15, at 289–90.

⁸¹ House Subcommittee Report, *supra* note 15, at 290.

⁸² House Subcommittee Report, *supra* note 15, at 290.

1 87. During his July 2020 testimony before the House Subcommittee, Amazon's
2 CEO Jeff Bezos all but admitted that placement in the Buy Box is tied to a Sellers' purchase
3 of Amazon's Fulfillment services:

4 Rep. Scanlon: "Okay, so we've got fulfillment by Amazon. And a
5 year ago, we asked whether a merchant who was enrolled in
6 Fulfillment By Amazon, also known as FBA, is a factor in whether
7 they can be awarded the Buy Box. And at that time, Amazon said no.
8 But the evidence is indicating, and your own documents are showing,
9 that being enrolled in that program is a major factor, and **it**
10 **effectively forces sellers to pay for fulfillment services from**
11 **Amazon if they want to make sales.** Mr. Bezos, has Amazon's Buy
12 Box algorithm ever favored third party sellers who buy fulfillment
13 services from Amazon over other sellers?"

14 Jeff Bezos: "I think effectively the Buy Box, directly or indirectly, I'm
15 not sure if it's direct, but indirectly, **I think the Buy Box does favor**
16 **products that can be shipped with Prime.**"⁸³

17 88. Indeed, before its unlawful practices came under scrutiny, Amazon openly
18 touted the fact that purchasing Fulfillment services from Amazon gave Sellers an advantage.
19 From February 2013 through December 2015, Amazon proudly proclaimed on its website:
20 "Because most FBA listings are ranked without a shipping cost, you get an edge when
21 competing!"⁸⁴

22
23 ⁸³ *Big Tech Antitrust Hearing Full Transcript July 29*, REV (July 29, 2020) (emphasis added),
24 <https://www.rev.com/blog/transcripts/big-tech-antitrust-hearing-full-transcript-july-29>.

25 ⁸⁴ Julia Angwin & Surya Mattu, *Amazon Says It Puts Customers First. But Its Pricing*
Algorithm Doesn't, PROPUBLICA (Sept. 20, 2016) (emphasis added),

1 89. Amazon's anticompetitive tying scheme to force Sellers to pay for its
 2 Fulfillment services has been wildly successful: approximately 85% of the top 10,000
 3 Amazon Sellers—and 73% of Sellers worldwide—use FBA.⁸⁵

4 **2. Amazon's Seller Fulfilled Prime program illustrates the company's**
 5 **anticompetitive double standard.**

6 90. In 2015, Amazon did introduce an ostensible way for Sellers to gain access to
 7 the Buy Box *without* paying for Fulfillment by Amazon. The company called the program
 8 "Seller Fulfilled Prime," but the program turned out to be no more than a fig leaf that failed
 9 to conceal Amazon's scheme from Sellers and regulators.

10 91. Nominally, Seller Fulfilled Prime gave Sellers a chance to obtain a Prime
 11 Badge and access to the Buy Box *without* paying for Fulfillment by Amazon.⁸⁶

12 92. Practically, however, "only a very small percentage of sellers could meet the
 13 onerous eligibility requirements for Seller Fulfilled Prime."⁸⁷ Those eligibility requirements
 14 include, among other things (i) that "99% of orders must be shipped on time and less than
 15 0.5% cancelled,"⁸⁸ and (ii) "an on-time delivery rate of 98.5 percent."⁸⁹

16 93. These requirements are so stringent that *Amazon itself was incapable of*
 17 *achieving them*. The share of packages purchased directly from Amazon that were not
 18

19
 20 [https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-
 algorithm-doesnt](https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-algorithm-doesnt).

21 ⁸⁵ House Subcommittee Report, *supra* note 15, at 288, 290.

22 ⁸⁶ Andrew Foot, *FBA vs FBM: Should You Opt for Amazon Fulfillment Services or Use Your*
 23 *Own Resources?*, NEWSTEX BLOG (Nov. 1, 2019) (accessed via LEXISNEXIS).

24 ⁸⁷ House Subcommittee Report, *supra* note 15, at 287.

25 ⁸⁸ Foot, *FBA vs FBM*, *supra* note 86.

⁸⁹ Mitchell, et al., *Amazon's Monopoly Tollbooth*, *supra* note 40, at 8.

1 delivered on time went from 4.6% in 2017 to 8.6% in 2018 to an astounding **16.6% in**
 2 **2019.**⁹⁰

3 94. Thus, it was evident from its inception that Seller Fulfilled Prime was an
 4 anticompetitive sham. In addition to Amazon being unable to meet the criteria it established
 5 for Sellers, Amazon threatened to revoke the Prime status of some Sellers who used Seller
 6 Fulfilled Prime “unless they switched from buying postage from the U.S. Postal Service to
 7 buying it from Amazon, often at higher rates.”⁹¹

8 95. In February 2019, “Amazon stopped allowing new sellers to sign up” for
 9 Seller Fulfilled Prime.⁹²

10 **3. Amazon taxes Sellers to fund the rapid expansion of its logistics business.**

11 96. Because Sellers’ access to the Buy Box is conditioned on their purchasing
 12 Amazon’s Fulfillment services, Amazon is able to charge Sellers supra-competitive fees for
 13 Fulfillment by Amazon. These fees operate as a tax that Amazon uses to fund its foray into
 14 the logistics industry and to cover losses in its other parts of its business.

15 97. As one logistics consultant explained, the only reason for a Seller to pay for
 16 Amazon’s Fulfillment services is because they are being coerced to do so:

17 On a dollars and cents side, [Fulfillment by Amazon is] not that
 18 competitive. ... I’d recommend Amazon if they were really good on
 19 price, but they’re not. If it weren’t for the algorithm, if it weren’t for
 20

21 ⁹⁰ Rachel Premack, *Amazon is moving away from the USPS and UPS for its in-house delivery*
 22 *network — but the ‘sloppier’ system may be delaying your packages (AMZN, UPS)*, BUSINESS
 23 INSIDER (July 3, 2019), [https://markets.businessinsider.com/news/stocks/amazon-late-](https://markets.businessinsider.com/news/stocks/amazon-late-packages-compared-to-fedex-ups-usps-shipping-2019-7)
 24 [packages-compared-to-fedex-ups-usps-shipping-2019-7](https://markets.businessinsider.com/news/stocks/amazon-late-packages-compared-to-fedex-ups-usps-shipping-2019-7).

24 ⁹¹ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 8.

25 ⁹² Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 8.

the fifty-plus pressure points that Amazon is placing on the business,
FBA wouldn't be attractive.⁹³

98. Amazon's power in the e-commerce market has allowed it to sharply raise the fees for its Fulfillment services over time. The company's revenues from its logistics business grew from approximately \$3 billion in 2014 to \$29 billion in 2019.⁹⁴

99. The increase in revenue from Amazon's Fulfillment services is primarily driven by the steep increase in the fees charged by the company, not an increase in the number of Sellers who pay for Fulfillment by Amazon:

Between 2013 and 2019, the standard rate for storing inventory in Amazon's warehouses during off-peak months rose **67 percent**. For the peak months of October through December, the rate soared by **300 percent**. Storage rates for standard-sized items (those under 20 pounds and within certain dimensions) are now 75 cents per cubic foot per month during the first part of the year and \$2.40 during the peak season. **Amazon's storage fees are much higher than those of its competitors**, according to several sources. ...

The prices Amazon charges to pack and ship an item have likewise risen. ... Prices across the board went up [between 2013 and 2020].

The size of the increase varied widely, but the median increase for an item was 55 percent.⁹⁵

⁹³ Mitchell, et al., *Amazon's Monopoly Tollbooth*, *supra* note 40, at 8.

⁹⁴ Mitchell, et al., *Amazon's Monopoly Tollbooth*, *supra* note 40, at 8.

⁹⁵ Mitchell, et al., *Amazon's Monopoly Tollbooth*, *supra* note 40, at 8; *see also* Stacy Mitchell, *Amazon Doesn't Just Want to Dominate the Market – It Wants to Become the Market*, THE NATION (Feb. 15, 2018) (accessed via LEXISNEXIS) (As more third-party sellers have agreed to sign

100. For a wide variety of products, the shipping fees Amazon charges Sellers who use its Fulfillment services increased by more than 100% from 2013 to 2020, and the storage fees increased by 200% or more during the same period:⁹⁶

Product	Fulfillment Fees (for shipping 1 item)				Storage Fees (for 1 item stored for 2 months)			
	2013	2016	2020	Change 2013-2020	2013	2016	2020	Change 2013-2020
Athletic shirt	2.46	3.42	3.70	50%	0.02	0.07	0.07	250%
Baby cot	7.65	8.88	10.92	43%	0.66	0.99	1.05	59%
Bathroom scale	4.51	5.57	6.56	45%	0.19	0.52	0.58	205%
Coffetable book	3.30	3.94	6.56	99%	0.08	0.23	0.25	213%
Cookware set	12.21	15.51	19.28	58%	2.51	3.77	4.01	60%
Desk organizer	2.99	4.01	4.90	64%	0.12	0.31	0.35	192%
Disposable plates	3.75	4.79	5.80	55%	0.11	0.30	0.34	209%
Doll	3.37	4.40	5.80	72%	0.26	0.70	0.79	204%
Dry erase board	6.51	10.44	13.58	109%	0.61	0.91	0.97	59%
Foam mattress	42.59	44.98	55.44	30%	9.64	25.63	28.93	200%
Football	3.75	4.79	6.18	65%	0.30	0.80	0.90	200%
Glass jars	6.41	7.52	9.22	44%	1.03	2.74	3.10	201%
Hammock	23.97	25.87	29.31	22%	2.80	4.21	4.48	60%
Hardcover book	1.76	2.30	4.90	178%	0.01	0.03	0.04	300%
Headphones	2.16	2.71	5.42	151%	0.18	0.48	0.55	206%
Phone case	1.46	1.91	3.48	138%	0.02	0.05	0.06	200%
Ping-pong table	191.20	197.67	203.56	6%	9.66	14.53	15.45	60%
Playstation console	0.00	0.00	8.08	n/a	0.52	1.37	1.55	198%
Playstation controller	1.46	1.91	3.31	127%	0.03	0.08	0.09	200%
Printer	14.49	15.90	17.76	23%	1.92	2.89	3.07	60%
Roll of packing tape	2.46	3.02	3.48	41%	0.02	0.04	0.05	150%
Stapler	2.46	3.02	3.48	41%	0.01	0.03	0.04	300%
Stationary cycle	111.32	117.98	193.55	74%	13.75	20.70	22.01	60%
Surfboard pads	4.99	6.15	8.26	66%	0.06	0.15	0.17	183%
Toy cottage	130.00	135.11	141.68	9%	21.21	31.91	33.93	60%
Toy dump truck	5.27	6.35	8.08	53%	0.80	2.13	2.41	201%
Trilogy book set	3.37	4.40	5.42	61%	0.08	0.21	0.23	188%
Yard storage bench	68.00	72.38	88.42	30%	8.83	13.28	14.12	60%
Median Change, 2013-2020				55%	190%			

up for these services, Amazon has repeatedly raised its fees, with fulfillment fees rising [in 2018] by as much as 14 percent for standard-size items (and more for oversize goods), on top of similar increases in 2017.”).

⁹⁶ Mitchell, et al., *Amazon's Monopoly Tollbooth*, *supra* note 40, at 11.

1 101. One Seller told federal lawmakers that “[d]espite the slow delivery times,
2 Amazon’s logistics fees were **35% higher** than other rapid shipping options offered by UPS
3 and the U.S. Postal Service”⁹⁷

4 102. Amazon’s supra-competitive pricing of its Fulfillment services is consistent
5 with the other fees it charges Sellers—e.g., the referral fees that Amazon collects from
6 Sellers for every item sold through its platform.

7 103. From 2015 to 2020, Amazon’s “revenue from seller fees [grew]
8 two-and-a-half times as fast as total consumer spending on its site” because “it [was] taking
9 a larger cut of every dollar sellers make on the site.”⁹⁸ In 2015, Amazon took \$19 of every
10 \$100 in sales that a Seller made on Amazon.com; by 2020, Amazon’s cut had increased to
11 over \$30 of every \$100 in sales that a Seller made through the platform.⁹⁹

12 104. The ever-increasing pressure from Amazon on Sellers’ bottom lines led
13 directly to Sellers increasing their prices to make margin. Consumers therefore absorb the
14 supra-competitive fees that Sellers pay to Amazon, including the fees that Sellers pay for
15 Fulfillment services.

16 105. Despite all evidence to the contrary, Amazon continues to represent that the
17 purpose of the Buy Box is “[t]o give customers the best possible shopping experience,” and
18 that Sellers’ placement in the Buy Box is based on “performance-based requirements.”¹⁰⁰

19 106. Amazon’s actions during the COVID-19 pandemic prove otherwise.
20
21

22 ⁹⁷ Soper, *Amazon Accused of Forcing Up Prices*, *supra* note 33 (emphasis added).

23 ⁹⁸ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 4.

24 ⁹⁹ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 4.

25 ¹⁰⁰ *How the Featured Offer works*, AMAZON SELLER CENTRAL (last visited Jan. 19, 2022),
<https://sellercentral.amazon.com/gp/help/external/37911?language=en-US>.

4. COVID-19: Amazon Unmasked

107. By placing stress on Amazon's logistics system, the COVID-19 pandemic for the first time gave consumers a clear view of the harms caused by Amazon's exploiting its customers' loyalty to force Sellers to pay for Amazon's logistics services.

108. As brick-and-mortar stores shuttered and people were directed to shelter in place, millions of Americans were forced to turn to Amazon, leading the company's revenues to skyrocket.

109. But consumers who were used to quick delivery were shocked to find that many of the items they ordered from Amazon didn't arrive for weeks.¹⁰¹

110. Amazon sought to explain the delays by pointing out that it "was inundated with orders to the point that its warehousing and shipping system buckled."¹⁰²

111. But the main reason for the delays was Amazon's tying scheme, which is reflected in the Buy Box algorithm: "The variable that has the greatest impact on the Buy Box is the product's fulfillment method," and the Buy Box algorithm gives Fulfillment by Amazon a perfect score across all variables, *regardless of how Amazon's Fulfillment services actually performs against competing logistics methods used by Sellers*.¹⁰³

112. Amazon's Buy Box algorithm therefore continued to select products offered by Amazon or Sellers who used Amazon's Fulfillment services (the tied product), "[e]ven

¹⁰¹ See Knox & Shaoul, *How Amazon Used the Pandemic to Amass More Monopoly Power*, *supra* note 20 ("At the height of the pandemic, with many storefronts shuttered over statewide shelter-in-place orders, shoppers who turned en masse to Amazon's ubiquitous online marketplace found many of the products they wanted wouldn't arrive for weeks. For a company 'obsessed' with consumer satisfaction, Amazon Prime was unable to deliver.").

¹⁰² Knox & Shaoul, *How Amazon Used the Pandemic to Amass More Monopoly Power*, *supra* note 20.

¹⁰³ Lanxner, *The Amazon Buy Box*, *supra* note 29.

1 when it became clear that Amazon’s logistics weren’t up to the task, and that sellers on its
 2 marketplace could independently get orders to customers faster.”¹⁰⁴

3 113. One Seller recounted the drastic steps it had to take to make a sale early in the
 4 pandemic despite having shipping times much faster than those available through Amazon’s
 5 Fulfillment services:

6 The manager of a company that sells on Amazon, who spoke on the
 7 condition of anonymity due to fear of retaliation, says that during the
 8 pandemic, their products in Amazon’s fulfillment system saw
 9 significant delays; it would be weeks before Amazon could get those
 10 products to customers. The company had the same products in its
 11 own warehouse that it could deliver to customers in days, not weeks.
 12 But in order for shoppers to find those products [which did not appear
 13 in the Buy Box], it had to drastically increase the prices of the
 14 products stored in Amazon’s warehouse, despite the far longer
 15 shipping times. Only after jacking up the prices of their “Prime” offers
 16 did the company see some increase in sales, albeit still a fraction of
 17 their sales last March, the manager says.¹⁰⁵

22 ¹⁰⁴ Knox & Shaoul, *How Amazon Used the Pandemic to Amass More Monopoly Power*,
 23 *supra* note 20.

24 ¹⁰⁵ Knox & Shaoul, *How Amazon Used the Pandemic to Amass More Monopoly Power*,
 25 *supra* note 20.

114. Through March 2020, “Amazon was still giving ‘Buy Box’ preference to offers that were fulfilled by Amazon’s own logistics network, *even if the shipping time was considerably longer (delays were reported of up to a month) and the price was more expensive.*”¹⁰⁶

115. To avoid fallout from the harm that its anticompetitive Buy Box algorithm was causing consumers, by April 2020 the company temporarily changed the algorithm so that “[o]n Fulfilled By Merchant (FBM) offers similar to FBA offers, [Amazon gave] preference to FBM in the algorithm.”¹⁰⁷

116. One Seller who used both Fulfillment by Amazon and Fulfillment by Merchant described the temporary change to Amazon’s Buy Box algorithm as “unprecedented”:

Peter Marlega, director of operations at mobile phone accessory seller Tech Armor, said he too had noticed and adapted to Amazon’s buy box algorithm change – in some cases raising the price of an FBA offer so the FB[M] offer would win

“This is unprecedented in my experience,” said Marlena, who has been in ecommerce since 2006 and has been using FBA for years.

“It’s the smart thing for Amazon to do, because they’re still getting the sale. We’ve always done both FBA and FBM listings. But just

¹⁰⁶ Kiri Masters, *Amazon Gives A Boost To Merchants Who Fulfill Their Own Orders While Warehouses Struggle To Cope With COVID-19 Demand*, FORBES (Mar. 31, 2020), <https://www.forbes.com/sites/kirimasters/2020/03/31/amazon-gives-a-boost-to-merchants-who-fulfill-their-own-orders-while-warehouses-struggle-to-cope-with-covid-19-demand/?sh=540e28056e1b>.

¹⁰⁷ Mike O’Brien, *Amazon Adjusted Buy Box Algorithm, Rewarding Merchant Fulfilled Orders*, MULTICHANNEL MERCHANT (Apr. 7, 2020), <https://multichannelmerchant.com/ecommerce/amazon-adjusted-buy-box-algorithm-rewarding-merchant-fulfilled-orders/>.

three weeks ago, even if made my FBM listing 75% of the FBA price, the FBA offer still wins the buy box. I can even offer overnight shipping, but FBA still wins.”

The algorithm tweak has significantly improved conversion rates [i.e., the number of page visits that result in a sale], Marlenga said. Prior to the change, if Tech Armor had a product listed through FBA and inventory ran out and its FBM offer won the buy box, the conversion rate would still dip by 50% to 75%

“Now in [*sic*] when we have an FBM offer in the buy box, the conversion rate is only down 10%–20% (from competing Prime offers),” he said. “I imagine shoppers are searching and finding that Prime eligible offers have a 21-plus day lead time and they’re coming back to us.”¹⁰⁸

117. Amazon used the record-breaking revenues and profits generated by the pandemic to scale up its logistics business, “expand[ing] its logistics footprint by 50%” in 2020.¹⁰⁹

118. Amazon’s reputation as an online retailer would have taken a serious hit during the pandemic but for its decision to temporarily change the Buy Box algorithm to present consumers with offers from Sellers that offered a lower price and faster shipping than Amazon or Sellers who used the company’s Fulfillment services.

¹⁰⁸ *Id.*

¹⁰⁹ Katherine Khashimova Long, *Amazon posts record sales and profit, with no slowing expected*, SEATTLE TIMES ONLINE (Feb. 2, 2021) (accessed via LEXISNEXIS).

1 119. With its self-inflicted crisis averted, Amazon soon returned to its former Buy
2 Box algorithm, designed to effectuate its tying scheme and prioritize the expansion of
3 Amazon's logistics business over the company's steadfastly loyal consumers.

4 **C. Econ 101: How Amazon's Strong-Arming of Sellers Leads Directly to Higher Prices**
5 **for Consumers**

6 120. Amazon's tying a Seller's access to the Buy Box on the Seller paying for the
7 company's Fulfillment services is unlawful and harmful to Sellers. But Amazon's violation
8 of the antitrust laws also injures consumers by overcharging them for purchases made on
9 Amazon.com in at least four different ways.

10 **1. Amazon directs consumers to purchase items from Sellers who use Fulfillment by**
11 **Amazon, even if a non-FBA Seller is offering the item for a lower total price.**

12 121. The Buy Box offers consumers items that are either by Amazon or by Sellers
13 who pay for Fulfillment in the Buy Box, even if the same item is offered by a non-FBA
14 Seller at a lower total price and equivalent (or better) shipping times.

15 122. As ProPublica's 2016 investigation found, "[a]bout three-quarters of the time,
16 Amazon placed its own products and those of companies that pay for its services
17 [e.g., Fulfillment by Amazon] in [the Buy Box] *even when there were substantially cheaper*
18 *offers available from others,*" and "[m]ost Amazon shoppers end up clicking 'add to cart' for
19 the offer highlighted in the buy box."¹¹⁰

20 123. A comment by a Seller on the Amazon Services Seller Forum echoes
21 ProPublica's findings:

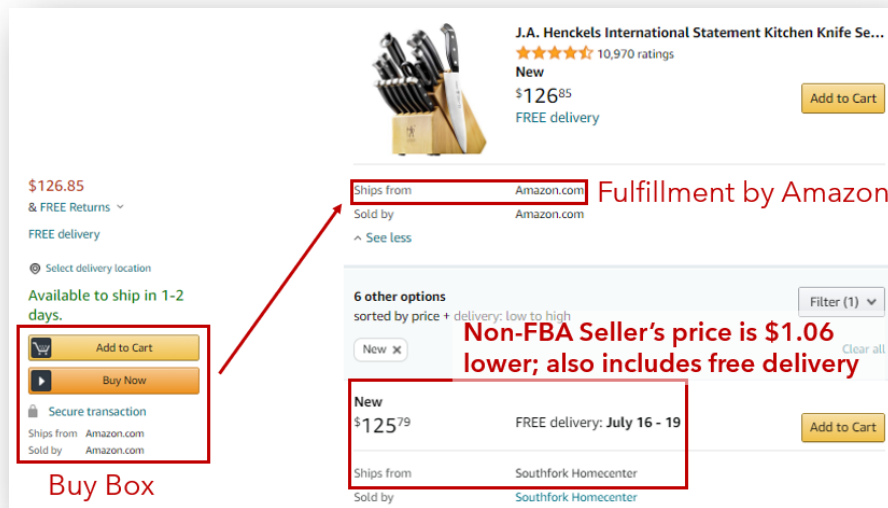
22 Only reason so many overpriced items have actually sold is due to the
23 fact the buyer is being duped by amazon.

24
25 ¹¹⁰ Angwin & Mattu, *Amazon Says It Puts Customers First*, *supra* note 84 (emphasis added).

When they force a buy box position to an over priced seller the buyers typically did not know and just ASSUMED amazon was operating in good faith and in the buyers best interest. When in fact they were not.¹¹¹

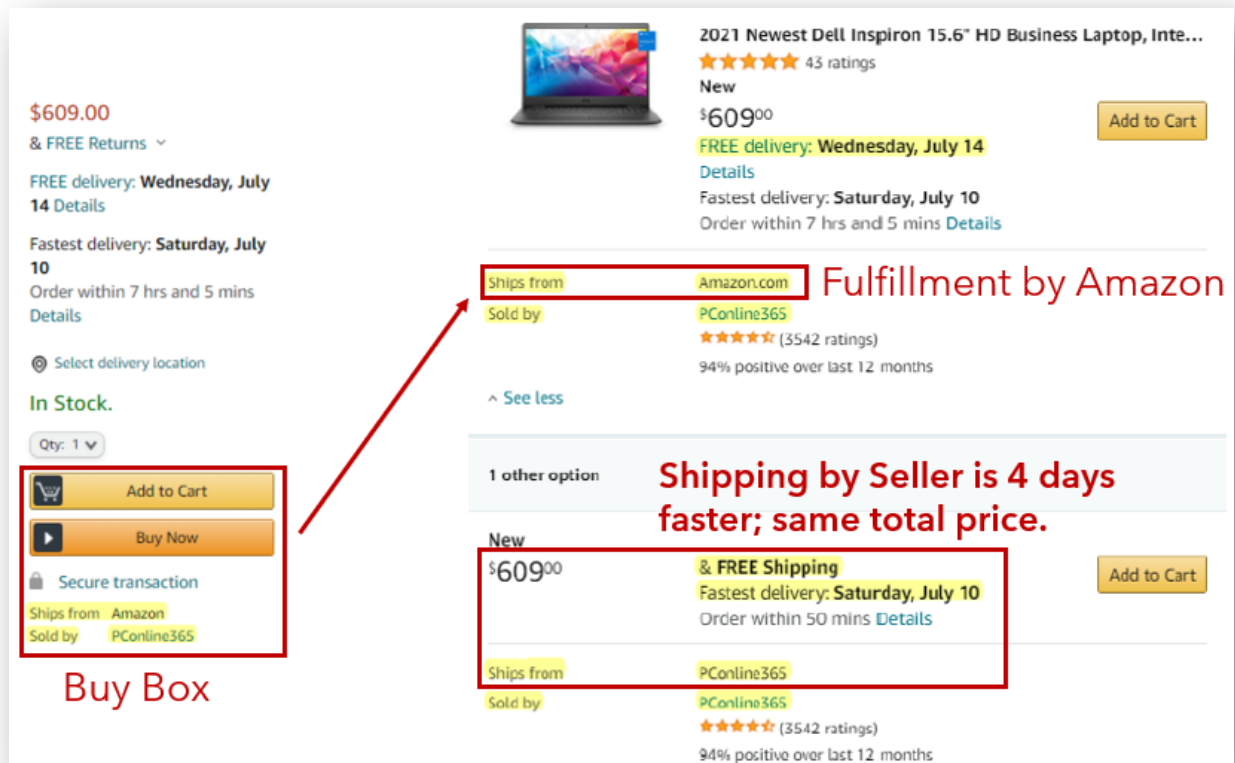
124. Although the majority of Sellers have been forced by Amazon to use Fulfillment by Amazon and therefore have access to the Buy Box, there are still non-FBA Sellers who do not appear in the Buy Box and whose listings give lie to Amazon's representation that the Buy Box offers consumers the best deal.

125. For example, the image below shows that Amazon's offer of \$126.85 for a set of kitchen knives won the Buy Box even though a Seller offered the same item for \$1.06 less, and both Amazon and the Seller offered free shipping:



¹¹¹ Seller Skeeter, *Items are priced higher on Amazon than at other retailers*, AMAZON SERVICES SELLER FORUM (Apr. 4, 2019), <https://sellercentral.amazon.com/forums/t/items-are-priced-higher-on-amazon-than-at-other-retailers/450662>.

126. The next image is a striking illustration of how Sellers are forced to pay for Amazon's Fulfillment services. Seller PConline365 offers a Dell Inspiron laptop for sale and provides both Fulfillment by Amazon ("Ships from Amazon.com") and Fulfillment by Merchant ("Ships from PConline 365"). The price offered is identical, but the free shipping offered by the Seller is 3 days *faster* than Amazon's shipping. Nonetheless, the item that won the Buy Box is the one that was warehoused and shipped by Amazon:



127. Some of the biggest price differences appear when an item is *not* sold by Amazon, but by two Sellers—a Seller that handles its own shipping and a Seller that pays for Fulfillment services and therefore wins the Buy Box. In the following example, the Seller

that is paying for FBA won the Buy Box, even though the other Seller's price was \$20.01—or 25%—lower:

Buy Box

Non-FBA Seller's total price is \$20.01—or 25%—lower

Ships from	Sold by	Price	Delivery
Amazon.com	Amazon.com	\$80.00	FREE delivery: Wednesday, July 14
Bikeys big deals	Bikeys big deals	\$54.00	\$5.99 delivery: July 15 - 30

128. While the delivery-time estimates do vary for the two Sellers in the above example, the only obvious reasons for Amazon's algorithm placing the item that is 25% more expensive in the Buy Box are (i) to ensure that the sale goes to the Seller who pays for Amazon's Fulfillment Services and (ii) to get higher referral fees from the sale. Given that Sellers pay Amazon 15% of the sale price for any item in the "Kitchen" category, Amazon would earn \$3.90 more in referral fees if the consumer purchase the item from the FBA Seller.¹¹²

¹¹² $0.15 \times (\$80 - \$54) = \$3.90$.

2. The Buy Box algorithm's preference for Sellers who purchase Amazon's Fulfillment services decreases price competition among Sellers, resulting in consumers paying higher prices than they would have but for Amazon's unlawful tying arrangement.

129. The Buy Box algorithm presents the consumer with an offer from a Seller who pays for Fulfillment by Amazon, even if another Seller with faster (non-FBA) shipping is selling the same item for a lower price.

130. In this way, Amazon has intentionally designed its algorithm to force Sellers to purchase the company's Fulfillment services or risk going out of business, as 90% of the purchases on Amazon.com are made through the Buy Box.

131. Amazon's design of the Buy Box algorithm leads directly to a decrease in price competition, given that the vast majority—73%—of Sellers use Amazon's Fulfillment services.

132. With 73% of Sellers assured that they will win the Buy Box based on their paying for Fulfillment by Amazon *even if a non-FBA Seller is offering a lower price and faster delivery*, the incentive to compete based on price is greatly reduced.

133. Because there is less price competition among FBA Sellers, the prices for items featured in the Buy Box are higher than they would be but for Amazon's scheme to expand its logistics business by forcing Sellers to use its Fulfillment services.

3. Sellers pass on the supra-competitive cost of Fulfillment by Amazon to consumers in the form of higher prices.

134. Sellers who purchase Amazon Fulfillment services to win the Buy Box are able to—and do—charge higher prices than they would but for Amazon's anticompetitive conduct.

1 135. A fundamental principle of economics is that a business will increase the price
 2 of a product if it can do so without decreasing demand for the product. For several reasons,
 3 the price of items sold through Amazon.com is relatively inelastic, meaning (among other
 4 things) that an increase in price does not lower demand.

5 136. As explained in the House Subcommittee’s Report, Prime members—who
 6 account for the vast majority of sales on Amazon.com¹¹³—are relatively insensitive to
 7 increases in price:

8 Once Prime members pay the upfront annual membership fee, they
 9 are likely to concentrate their online purchases with Amazon As
 10 one market participant observed, “Prime members will continue to
 11 use Amazon and not switch to competing platforms, *despite higher*
 12 *prices and lower-quality items on Amazon* compared to other
 13 marketplaces, *and despite recent increases in the price of a Prime*
 14 *membership.*”¹¹⁴

15
 16 ¹¹³ Most people who purchase items through Amazon are Amazon Prime members, *see*
 17 Sabanoglu, *Number of Amazon Prime users in the United States from 2017 to 2022*, *supra* note 59
 18 (showing that there were 142.5 million Prime members in United States in 2020), and Prime
 19 members also account for the vast majority of sales through Amazon, “spend[ing] an
 20 average of \$1,400 annually on Amazon, versus \$600 [spent annually by] non-members.”
 House Subcommittee Report, *supra* note 15, at 260.

21 ¹¹⁴ House Subcommittee Report, *supra* note 15, at 260 (emphasis added);
 22 *see also* Fishman, *Amazon, the Price Perception Leader*, *supra* note 61 (“Amazon loyalists shop
 23 on Amazon.com trusting that they are getting a bargain. . . . [I]t’s this perception of low
 24 pricing that helps make shopping on Amazon almost instinctual to many consumers. It’s
 25 this perception that keeps Amazon shoppers from checking other sites for lower pricing
 before hitting the ‘Place Your Order’ button. It makes retail shoppers check their Amazon
 app before heading to the register. It’s enough to convince folks to make purchases with just

1 137. Higher prices also are unlikely to prompt Amazon’s customers to shop
2 elsewhere given the “switching costs associated with consumers shopping outside of the
3 Amazon ecosystem.”¹¹⁵

4 138. Accordingly, the ever-increasing fees that Sellers are charged by Amazon—
5 including fees for Amazon’s Fulfillment services—are “being absorbed by consumers in the
6 form of higher prices.”¹¹⁶ Because Prime member purchasers are relatively insensitive to
7 price increases, Sellers can and do pass on the cost of Amazon’s Fulfillment services instead
8 of, for example, absorbing the increased costs through lower profit margins.

9 139. Sellers themselves report that they have to increase their prices because of the
10 fees charged by Amazon. In one thread on the Amazon Services Seller Forum, titled “Items
11 are priced higher on Amazon than at other retailers,” an Amazon Seller wrote: “On
12 Amazon we can control our pricing and *we build in all amazon fees*. Therefore after all fees
13 we charge a certain price based on percentage.”¹¹⁷

14 140. Another Seller on the same thread wrote: “[I]f they [Amazon] want to have
15 the highest fees on the internet for 3rd party sellers, they are also going to be the least likely
16 place to find the best deal. If they brought their fees down to be in line with the other
17
18
19

20 _____
21 an Alexa voice command or a Dash button-push without concern for how little visibility
22 they have into actual market pricing.”).

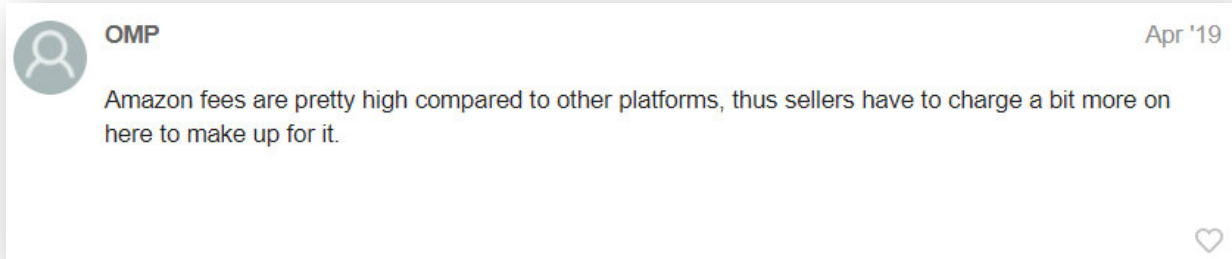
23 ¹¹⁵ House Subcommittee Report, *supra* note 15, at 260.

24 ¹¹⁶ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 6.

25 ¹¹⁷ Post by Seller plastic-gur, *Items are priced higher on Amazon than at other retailers*,
AMAZON SERVICES SELLER FORUM (Apr. 3, 2019), <https://sellercentral.amazon.com/forums/t/items-are-priced-higher-on-amazon-than-at-other-retailers/450662>.

platforms like eBay, they'd be more likely to at least have price parity with other platforms."¹¹⁸

141. A third Seller likewise confirmed that Amazon Sellers charge consumers more because of the high fees imposed by Amazon.¹¹⁹



4. FBA Sellers' charging consumers higher prices enables Amazon to do the same.

142. Because many items on Amazon's website are sold by both Amazon and its Sellers, the Sellers' increasing prices to offset the supra-competitive cost of Fulfillment services enables Amazon to charge higher prices on items that are identical (or comparable) to those sold by FBA Sellers.

143. As with Sellers, one factor that enables Amazon to increase its prices is that the price of items sold on Amazon.com—and especially through the Buy Box—is very inelastic, in large part due to the (often misplaced) brand loyalty of Amazon shoppers.

¹¹⁸ Post by Seller AudioFan, *Items are priced higher on Amazon than at other retailers*, AMAZON SERVICES SELLER FORUM (Apr. 3, 2019), <https://sellercentral.amazon.com/forums/t/items-are-priced-higher-on-amazon-than-at-other-retailers/450662>.

¹¹⁹ Post by Seller OMP, *Items are priced higher on Amazon than at other retailers*, AMAZON SERVICES SELLER FORUM (Apr. 4, 2019), <https://sellercentral.amazon.com/forums/t/items-are-priced-higher-on-amazon-than-at-other-retailers/450662>.

144. Amazon uses algorithms to price its items. The company “changes product prices 2.5 million times a day,” based on its analyses of “customer’s shopping patterns, competitors’ prices, profit margins, inventory, and a dizzying array of other factors.”¹²⁰ One of Amazon’s principal pricing strategies is to “undercut [its] competitors [i.e., Sellers] on popular products.”¹²¹

145. This means that, when a Seller raises the price of a product to offset the supra-competitive fees it pays for Amazon’s Fulfillment services, Amazon’s algorithm has room to raise Amazon’s prices while still undercutting the Seller.

146. Thus, the consumer is being overcharged regardless of whether the consumer purchases the item from Amazon or the Seller.

D. Amazon’s Reign of Terror Over Sellers

147. Although countless Sellers are injured by Amazon’s unlawful tying scheme, the vast majority of them passively accept Amazon’s flagrant violation of the antitrust laws. There are two reasons for this: (i) Sellers fear retaliation by Amazon and (ii) the onerous contract terms imposed on Sellers by Amazon quash any incentive to challenge Amazon’s anticompetitive actions.

148. As one market participant told the House Subcommittee: “It would be commercial suicide to be in Amazon’s crosshairs . . . If Amazon saw us criticizing, I have no doubt they would remove our access and destroy our business.”¹²² As the House

¹²⁰ Neel Mehta, Parth Detroja & Aditya Agashe, *Amazon changes prices on its products about every 10 minutes — here’s how and why they do it*, BUSINESS INSIDER (Aug. 10, 2018), <https://www.businessinsider.com/amazon-price-changes-2018-8?op=1>.

¹²¹ *Id.*

¹²² House Subcommittee Report, *supra* note 15, at 74 (internal quotation marks omitted).

1 Subcommittee Report notes, a “single tweak of an algorithm” by a platform like Amazon
2 “could cause significant costs if not financial disaster—with little recourse.”¹²³

3 149. Sellers’ fears are well founded. Amazon has a long history of retaliating “to
4 coerce publishers to accept contractual terms that impose substantial penalties for promoting
5 competition with Amazon’s rivals.”¹²⁴

6 150. Amazon has retaliated against book publishers by, among other things, (i)
7 “removing the ‘buy’ button, which blocks a customer’s ability to purchase a publisher’s
8 current titles,” (ii) “removing the ‘pre-order’ button, which eliminates the ability for a
9 consumer to pre-order a publishers’ forthcoming titles,” and (iii) “showing publishers’ titles
10 as out of stock or with delayed shipping times.”¹²⁵

11 151. As the House Subcommittee Report succinctly puts it, “Amazon can treat
12 sellers in this manner because it knows that sellers have no other realistic alternatives to the
13 platform.”¹²⁶

14 152. Even those Sellers who are willing to risk taking on Amazon are effectively
15 precluded from doing so by the arbitration clauses they are required to sign to obtain access
16 to the online retail market through Amazon.¹²⁷

17 153. Whereas filing fees in federal court are a few hundred dollars, the total
18 “administrative fees” for a Seller filing an arbitration claim against Amazon range from
19
20

21 ¹²³ House Subcommittee Report, *supra* note 15, at 74.

22 ¹²⁴ House Subcommittee Report, *supra* note 15, at 269 (internal quotation marks
23 omitted).

24 ¹²⁵ House Subcommittee Report, *supra* note 15, at 269.

25 ¹²⁶ House Subcommittee Report, *supra* note 15, at 269.

¹²⁷ See House Subcommittee Report, *supra* note 15, at 273.

1 \$1,725¹²⁸ for claims of less than \$75,000 to as high as \$78,750 for claims of \$10 million and
 2 above.¹²⁹

3 154. Even worse, under Amazon’s “Services Business Solutions Agreement,”
 4 Sellers who are injured by Amazon’s tying arrangement or retaliatory conduct cannot
 5 recover the full amount of those injuries because the Agreement purports to essentially
 6 eliminate Amazon’s liability for *any* injury it inflicts on a Seller.¹³⁰

7 **8. Limitation of Liability.**

8 We WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT
 9 (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHER THEORY), OR
 10 OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER,
 11 RECOVERY, OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR
 12 YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY
 13 LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA OR PUNITIVE OR
 14 CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS
 15 AGREEMENT, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY
 16 OF THOSE COSTS OR DAMAGES. FURTHER, OUR AGGREGATE LIABILITY
 17 ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE
 18 TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE
 19 TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU
 20 TO AMAZON IN CONNECTION WITH THE PARTICULAR SERVICE GIVING
 21 RISE TO THE CLAIM.

22 ¹²⁸ See AAA’s *Commercial Arbitration Rules and Mediation Procedures: Fee Schedule*
 23 [hereinafter *AAA Fee Schedule*] (May 1, 2018), available at http://www.adr.org/sites/default/files/Commercial_Arbitration_Fee_Schedule_1.pdf; *Amazon Services Business Solutions Agreement*, AMAZON, at ¶ 18 (last visited Jan. 19, 2022) (providing that arbitration is to “be conducted by the American Arbitration Association (AAA) under its commercial rules”), <https://sellercentral.amazon.com/gp/help/external/1791?language=en-US>. This includes a \$925 initial filing fee plus \$800 final fee. See *AAA Fee Schedule*.

24 ¹²⁹ This includes an initial filing fee of \$11,000 plus .01% of the claim amount above
 25 \$10,000,000 up to \$65,000, *plus* a final fee of \$13,750. See *AAA Fee Schedule*, *supra* note 128.

¹³⁰ *Amazon Services Business Solutions Agreement*, *supra* note 150.

1 155. The onerous terms of Amazon’s Agreement with its Sellers make clear why
2 “sellers rarely initiate arbitration actions against Amazon”:¹³¹

3 Between 2014 and 2019, even as the number of Amazon sellers
4 continued to grow by hundreds of thousands per year, only 163 sellers
5 and 16 vendors initiated arbitration proceedings. Because sellers are
6 generally aware that the process is unfair and unlikely to result in a
7 meaningful remedy, they have little incentive to bring an action.¹³²

8 **E. Through its Fulfillment services, Amazon has created a two-sided market in which**
9 **both consumers and Sellers participate and pay Amazon for shipping.**

10 156. Amazon’s Fulfillment services are a two-sided market. On one side of the
11 market, Sellers pay Amazon for a full suite of FBA logistics services. On the other side of
12 the market, consumers pay Amazon for its shipping services.

13 157. Amazon Fulfillment Centers warehouse both items that are sold by Amazon
14 and those that are offered by Sellers who use FBA.

15 158. When a consumer purchases an item from Amazon or a Seller who uses
16 FBA, the item is shipped to the consumer by Amazon from an Amazon Fulfillment Center.

17 159. Regardless of whether the item ordered by the consumer is offered for sale by
18 Amazon or by the Seller, the consumer pays Amazon for both the item and the shipping of
19 the item, even when the shipping is nominally “free.”

20 160. Prime members pay Amazon directly for shipping by paying the Prime
21 membership fee, which is a monthly or annual shipping fee (depending on whether the
22

23
24 ¹³¹ House Subcommittee Report, *supra* note 15, at 273.

25 ¹³² House Subcommittee Report, *supra* note 15, at 273.

1 consumer pays for membership monthly or annually).¹³³ That the cost of shipping is
 2 included in the Prime membership fee is evidenced by the fact that, when Amazon raises the
 3 Prime membership fee, it regularly cites “rising shipping costs” as the reason for doing so.¹³⁴

4 161. Moreover, all Amazon customers (Prime members or not) directly pay
 5 Amazon for nominally “free” shipping because Amazon raises the prices of its products to
 6 subsidize its so-called “free” shipping.¹³⁵ Consumers who receive “free” shipping—whether
 7 because they are Prime members or because their order contains over \$25 worth of “eligible
 8

9 ¹³³ “The trick Amazon pulled off was to divorce shipping costs almost entirely from
 10 individual buying behavior *by charging an annual shipping fee*, then further camouflaging
 11 matters by making video-streaming services and the like part of the package.” Amanda
 12 Mull, *Stop Believing in Free Shipping: How retailers hide the costs of delivery—and why we’re such*
 13 *suckers for their ploys*, THE ATLANTIC (Jan./Feb. 2020 issue) (emphasis added), *available at*
 14 [https://www.theatlantic.com/magazine/archive/2020/01/the-myth-of-free-](https://www.theatlantic.com/magazine/archive/2020/01/the-myth-of-free-shipping/603031/)
 15 [shipping/603031/](https://www.theatlantic.com/magazine/archive/2020/01/the-myth-of-free-shipping/603031/).

16 ¹³⁴ See, e.g., Alina Selyukh, *Amazon raises price of annual Prime membership to \$139*, NPR
 17 (Feb. 3, 2022) (“Amazon last raised the cost of membership four years ago, in 2018, when
 18 the annual fee rose to \$119 a year from \$99 and the monthly fee to \$12.99 from \$10.99. At
 19 the time, *company executives said the increase was due to rising shipping costs* and other
 20 expenses of the program.” (emphasis added)), [https://www.npr.org/2022/02/03/](https://www.npr.org/2022/02/03/1077088524/amazon-raises-price-of-annual-prime-membership-to-139)
 21 [1077088524/amazon-raises-price-of-annual-prime-membership-to-139](https://www.npr.org/2022/02/03/1077088524/amazon-raises-price-of-annual-prime-membership-to-139); Jeffrey Dastin and
 22 Nivedita Balu, *Amazon hikes Prime membership fees in U.S. as wages, costs rise*, REUTERS
 23 (Feb. 3, 2022) (“Amazon.com Inc on Thursday said it was raising the price of its annual U.S.
 24 Prime subscriptions by 17%, *as it looks to offset higher costs* for shipping and wages that it
 25 expects to persist this year.” (emphasis added)), [https://www.reuters.com/business/media-](https://www.reuters.com/business/media-telecom/amazon-hikes-prime-membership-fees-us-2022-02-03/)
[telecom/amazon-hikes-prime-membership-fees-us-2022-02-03/](https://www.reuters.com/business/media-telecom/amazon-hikes-prime-membership-fees-us-2022-02-03/).

¹³⁵ See, e.g., Lisa Baertlein, *Amazon, other retailers revamp ‘free’ shipping as costs soar*,
 REUTERS (Mar. 24, 2023) “It is an open secret that most retailers raise product prices to
 subsidize free shipping.”), [https://www.reuters.com/business/retail-consumer/amazon-](https://www.reuters.com/business/retail-consumer/amazon-other-retailers-revamp-free-shipping-costs-soar-2023-03-24/)
[other-retailers-revamp-free-shipping-costs-soar-2023-03-24/](https://www.reuters.com/business/retail-consumer/amazon-other-retailers-revamp-free-shipping-costs-soar-2023-03-24/).

items”¹³⁶—are paying Amazon for shipping in the form of higher prices on the products they purchase from Amazon. Indeed, empirical studies have demonstrated that Amazon charges consumers for “free” shipping by raising the prices of the purchased items.¹³⁷

162. And Sellers, just like Amazon, raise the prices of items sold to account for FBA’s supracompetitive shipping fees. When a consumer purchases an item offered by a Seller who uses FBA, the customer is paying for shipping by Amazon’s Fulfillment services because the price of the item is inflated to account for those shipping costs.

163. In short, Plaintiffs and Class Members pay for the shipping that is a part of Amazon’s Fulfillment services. Plaintiffs and Class Members therefore pay for Amazon’s Fulfillment Services and are participants in the logistics market, which Amazon is attempting to monopolize through its unlawful tying scheme.

V. CLASS ACTION ALLEGATIONS

164. Plaintiffs eulqjvwkldfwlrq rq ehkdairiwhp vnyhvdqg/xqghuThghubUxdhri F lybSurfhgxuh 56(a), (b)(2), and (b)(3), as representatives of a Class defined as follows:

All persons who, while residing in the United States, purchased an item during the Relevant Period through Amazon’s Buy Box, and the order was then shipped (or “fulfilled”) by Amazon.

¹³⁶ *Amazon.com: free shipping over \$25*, AMAZON.COM (last visited June 2, 2023), “How do I get free shipping on orders over \$25? Shipping is free if your order includes at least the stated minimum threshold of eligible items.”), <https://www.amazon.com/free-shipping-over-25/s?k=free+shipping+over+%2425>.

¹³⁷ Isabel Steffens, *Amazon Prime and “Free” Shipping* (June 22, 2018), <https://escholarship.org/uc/item/0681j9rr>.

1 165. For purposes of this Complaint, the Relevant Period is January 1, 2013
2 through the present.

3 166. Excluded from the Class are Defendant Amazon and any entity in which
4 Defendant has a controlling interest, as well as any of Defendant's legal representatives,
5 officers, directors, assignees, and successors.

6 167. Members of the Class are so numerous that joinder of all Class Members is
7 impractical. Currently, there are more than 140 million Amazon Prime members in the
8 United States who spend an average of \$1,400 annually on the website. Likewise, there are
9 millions of Amazon shoppers without a Prime membership who spend an average of \$600
10 annually on the website. Given that 90% of purchases on Amazon's website are made
11 through the Buy Box, a conservative estimate is that there are at least 135 million Class
12 Members. Class Members are readily identifiable from information and records in
13 Amazon's possession.

14 168. Plaintiffs' claims are typical of the claims of the members of the Class.
15 Plaintiffs and Class Members were aggrieved by the same wrongful conduct of Amazon:
16 Amazon's tying arrangement steered consumers toward Sellers who paid for Amazon's
17 Fulfillment services, even when the total price charged by those Sellers was higher than that
18 of Sellers who did not use FBA. Amazon's tying arrangement further led to Sellers
19 increasing prices to offset the supra-competitive costs of FBA and to Amazon itself raising
20 prices on its own products.

21 169. Plaintiffs will fairly and adequately protect and represent the interests of the
22 Class. The interests of Plaintiffs are coincident with, and not antagonistic to, those of the
23 other members of the Class.
24
25

1 170. Plaintiffs are represented by counsel with experience in the prosecution of
2 class actions and with particular experience with antitrust class actions.

3 171. Questions of law and fact common to the members of the Class predominate
4 over questions that may affect only individual Class Members because Amazon has acted
5 on grounds generally applicable to the entire Class, thereby making damages with respect to
6 the Class as a whole appropriate. Such generally applicable conduct is inherent in Amazon's
7 wrongful actions.

8 172. Questions of law and fact common to the Class include:

- 9 a. Whether Amazon conditions Sellers' access to the Buy Box on
10 their purchasing Fulfillment services from Amazon.
- 11 b. Whether Amazon has significant market power over the Buy Box.
- 12 c. Whether Amazon has significant market power over e-commerce
13 generally.
- 14 d. Whether Amazon used its market power to force Sellers to
15 purchase Amazon's Fulfillment services.
- 16 e. Whether Amazon's conduct is a violation of Section 1 of the
17 Sherman Act, 15 U.S.C. § 1, and if so, whether it is a *per se*
18 violation.
- 19 f. Whether Amazon has monopoly power in the U.S. online
20 retail-goods market or the market for favorable Seller placement
21 on the Amazon website (e.g., the Buy Box).
- 22 g. Whether Amazon used its monopoly power to foreclose
23 competition, to gain advantage, or to destroy competitors in the
24
25

market for logistics—the warehousing, packing, and shipping of retail goods to consumers.

- h. Whether Amazon’s conduct is a violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.
- i. Whether Amazon charged supracompetitive prices as a result of its anticompetition conduct.
- j. Whether Sellers’ prices were and are higher than they would have been but for Amazon’s conditioning Sellers’ access to the Buy Box on their purchasing Fulfillment services from Amazon.
- k. Whether Amazon’s prices were and are higher than they would have been but for Amazon’s conditioning Sellers’ access to the Buy Box on their purchasing Fulfillment services from Amazon.
- l. Whether Amazon should be enjoined from conditioning Sellers’ access to the Buy Box on their purchasing Fulfillment services from Amazon.

173. Class-action treatment is a superior method for the fair and efficient adjudication of the controversy. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, or expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities a method for obtaining redress on claims that could not practicably be pursued individually, substantially outweighs potential difficulties in management of this class action.

1 174. Plaintiffs know of no special difficulty to be encountered in the maintenance
2 of this action that would preclude its maintenance as a class action.

3 4 **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

5 **A. Discovery-Rule Tolling**

6 175. The discovery rule tolls the running of the statute of limitations until a
7 plaintiff knows or has reason to know of the injury which is the basis of the action.

8 176. The discovery rule tolled the statute of limitations in this case until at least
9 November 8, 2019, when major news outlets reported that a Seller had sent a letter to
10 federal lawmakers, “accus[ing] Amazon of forcing him and other sellers to use the
11 company’s expensive logistics services, which in turn forces them to raise prices for
12 consumers.”¹³⁸

13 177. Although it previously had been reported that Sellers could increase their
14 chances of “winning” the Buy Box by paying for Fulfillment by Amazon, neither Plaintiffs
15 nor other consumers had any reason to read articles about winning Amazon’s Buy Box.

16 178. More importantly, even consumers who may have read an article before
17 November 2019 about the Buy Box algorithm did not know or have reason to know of the
18 injury—higher prices for Buy Box items—that is the basis of this action. Knowing of this
19 injury would have required a consumer to have understanding or knowledge of, among
20 other things: (i) economics, (ii) Amazon’s business model, (iii) the operation of Amazon’s
21 Buy Box algorithm, (iv) Amazon’s charging Sellers more for its Fulfillment services than
22 competing logistics companies who offered comparable or better logistics services, and
23

24
25 ¹³⁸ See, e.g., Soper, *Amazon Accused of Forcing Up Prices*, *supra* note 25.

(v) that Sellers were able to pass the cost of Amazon's overprices Fulfillment services on to consumers.

179. Plaintiffs and Class Members could not have reasonably discovered their injury until a Seller came forward in November 2019 to alert lawmakers that Amazon's tying arrangement was leading to higher prices for consumers.

180. For the above reasons, the applicable statute of limitations has been tolled by operation of the discovery rule.

B. Fraudulent-Concealment Tolling

181. The applicable statute of limitations also has been tolled by Amazon's fraudulent concealment throughout the period relevant to this action of the fact that its tying scheme was leading to higher prices for consumers who made purchases through the Buy Box.

182. Throughout the relevant period, Amazon's CEO Jeff Bezos made numerous public statements about Amazon's prices that constitute affirmative acts to mislead the public.

183. This is evidenced by Bezos's annual letters to shareholders, which regularly touted Amazon's commitment to "relentlessly lowering prices":¹³⁹

- (i) 2002: "People see that we're determined to offer both world-leading customer experience and the **lowest possible prices** Our pricing objective is not to discount a small number of products for a limited period of time, but to offer

¹³⁹ Jeff Bezos, *Letters to Amazon Shareholders, 1997 to 2020*, (emphasis added), available at https://bettertomorrowfinancial.com/wp-content/uploads/2021/04/jeff-bezos-amazon-shareholder-letters-1997_2020.pdf.

1 **low prices everyday** and apply them broadly across our entire
 2 product range.”¹⁴⁰

3 (ii) 2003: “Eliminating defects, improving productivity, and
 4 passing the resulting cost savings back to customers in the form
 5 of **lower prices** is a long-term decision.”¹⁴¹

6 (iii) 2005: “[W]e have made a decision **to continuously and**
 7 **significantly lower prices for customers year after year** as our
 8 efficiency and scale make it possible. ... Our judgment is that
 9 relentlessly returning efficiency improvements and scale
 10 economies to customers **in the form of lower prices** creates a
 11 virtuous cycle that leads over the long term to a much larger
 12 dollar amount of free cash flow, and thereby to a much more
 13 valuable Amazon.com.”¹⁴²

14 (iv) 2008: “Our pricing objective is to earn customer trust, not to
 15 optimize short-term profit dollars. We take it as an article of
 16 faith that pricing in this manner is the best way to grow our
 17 aggregate profit dollars over the long term. We may make less
 18 per item, but by consistently earning trust we will sell many
 19 more items. Therefore, **we offer low prices across our entire**
 20 **product range.**”¹⁴³

21
 22
 23 ¹⁴⁰ *Id.* (emphasis added)

24 ¹⁴¹ *Id.* (emphasis added).

25 ¹⁴² *Id.* (emphasis added).

¹⁴³ *Id.* (emphasis added).

- (v) 2009: “The financial results for 2009 reflect the cumulative effect of 15 years of customer experience improvements: increasing selection, speeding delivery, reducing cost structure so **we can afford to offer customers ever-lower prices**, and many others. ... We are proud of our low prices”¹⁴⁴
- (vi) 2012: “**We lower prices and increase value for customers** before we have to.”¹⁴⁵
- (vii) 2015: “Our approach to pricing is also driven by our customer-centric culture—**we’ve dropped prices 51 times**, in many cases before there was any competitive pressure to do so.”¹⁴⁶
- (viii) 2020: “We offer **low prices**, vast selection, and fast delivery”¹⁴⁷

184. Over the past 20 years, Bezos’s message (Amazon is determined to offer the lowest possible prices) has been relentlessly amplified by advertising and the news media.

185. In short, Amazon deliberately hoodwinked the public into believing that it was continuously laboring away to keep down prices by any means necessary when in fact the opposite was true. Amazon was highlighting products in its coveted Buy Box—which results in 90% of its sales—based not on the lowest price but rather on its unlawful tying scheme, which led to higher prices for consumers and more profit for Amazon. The statute of limitations is therefore tolled by Amazon’s fraudulently concealing the overcharges incurred by consumers as a result of the company’s tying scheme.

¹⁴⁴ *Id.* (emphasis added).

¹⁴⁵ *Id.* (emphasis added).

¹⁴⁶ *Id.* (emphasis added).

¹⁴⁷ *Id.* (emphasis added).

VII. CLAIMS FOR RELIEF

Claim 1: Violation of Section 1 of the Sherman Act (15 U.S.C. § 1) – Unlawful Tying Arrangement

186. Plaintiffs repeat and incorporate by reference all preceding paragraphs and allegations.

187. Amazon's tying arrangement is a *per se* violation of 15 U.S.C. § 1.¹⁴⁸

188. Amazon offered Sellers two distinct products or services in two different markets:

- (i) **the tying product**, namely placement in the Buy Box, which is a product or service in the market for favorable product placement on Amazon's website, and on the internet more broadly; and
- (ii) **the tied product**, namely Fulfillment by Amazon, which is a service in the market for logistics for retail goods in the United

¹⁴⁸ See, e.g., *Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1197 n.7 (9th Cir. 2012) ("A tying arrangement will constitute a *per se* violation of the Sherman Act if the plaintiff proves (1) that the defendant tied together the sale of two distinct products or services; (2) that the defendant possesses enough economic power in the tying product market to coerce its customers into purchasing the tied product; and (3) that the tying arrangement affects a not insubstantial volume of commerce in the tied product market." (citations and internal quotation marks omitted)); *Reifert v. S. Cent. Wis. MLS Corp.*, 450 F.3d 312, 316 (7th Cir. 2006) ("In order to establish the *per se* illegality of a tying arrangement, a plaintiff must show that: (1) the tying arrangement is between two distinct products or services, (2) the defendant has sufficient economic power in the tying market to appreciably restrain free competition in the market for the tied product, and (3) a not insubstantial amount of interstate commerce is affected." (citations omitted)).

States—namely, the warehousing, packing, and shipping of retail goods.

189. Amazon possesses appreciable economic power in the market for favorable product placement on Amazon’s website (including placement in the Buy Box) and in the market for favorable product placement on the internet generally.

190. Amazon’s economic power in the market for favorable placement on Amazon’s website (the tying product)—and in the market for favorable product placement in e-commerce more broadly—was and is sufficient to coerce Sellers to purchase Amazon’s Fulfillment services (the tied product). The livelihoods of the majority of Sellers depends on sales made through Amazon’s website. Sellers knew that if they did not agree to purchase Amazon’s Fulfillment services, their livelihoods would be ruined, as they would not appear in the Buy Box or be prominently displayed in Amazon’s search results.

191. Amazon’s anticompetitive scheme affects a not-insubstantial volume of commerce in the product market for logistics. Approximately \$163 billion products are sold through Amazon’s website every year.¹⁴⁹ The majority of those products are shipped through Amazon’s Fulfillment services. Amazon’s anticompetitive conduct has decreased competition in the logistics market (the tied product market) and has put numerous competitors in that market out of business.

192. Alternatively, even if Amazon’s conduct is not a *per se* violation of Section 1, Amazon has violated Section 1 under the rule of reason because it has unreasonably restrained competition.

¹⁴⁹ Carmen Ang, *Visualized: A Breakdown of Amazon’s Revenue Model*, VISUAL CAPITALIST (Oct. 14, 2020), <https://www.visualcapitalist.com/amazon-revenue-model-2020/>.

1 193. Specifically, Amazon suppressed and continues to suppress competition in the
 2 market for logistics services inside the United States.¹⁵⁰ And there is a substantial threat that
 3 Amazon will acquire market power in that market. Amazon has overtaken the U.S. Postal
 4 Service in terms of number of parcels, “deliver[ing] 2.5 billion parcels [in 2019], or about
 5 one-fifth of all e-commerce deliveries.”¹⁵¹ One analysis anticipates that Amazon will
 6 “overtake UPS and FedEx in market share by 2022.”¹⁵²

7 194. Moreover, favorable placement of a product on Amazon’s website—and in
 8 e-commerce more broadly—is completely distinct from logistics services. The two products
 9 or services cannot and should not be viewed as one.

10 195. The FBA services that Sellers pay for are one side of the two-sided market
 11 operated by Amazon. Plaintiffs and Class Members are on the other side of that two-sided
 12 market because, as consumers, they too pay for Amazon’s Fulfillment shipping when
 13 purchasing items that are “fulfilled” by Amazon.

14 196. Amazon’s unlawful tying arrangement has injured Plaintiffs and Class
 15 Members by directly leading to higher prices for items that Plaintiffs and Class Members
 16 purchased through Amazon’s Buy Box.

20 ¹⁵⁰ See generally Zvi Schreiber, *How Logistics Is Proving that Amazon Needs to Be Regulated*,
 21 FREIGHTOS (May 14, 2019) (“Amazon is taking its dominance from retail to marketplace to
 22 fulfillment logistics. And now it’s going further into shipping, using its advantages to offer
 23 freight and shipping.”), <https://www.freightos.com/how-logistics-is-proving-that-amazon-needs-to-be-regulated/>

24 ¹⁵¹ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 2.

25 ¹⁵² Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 2.

**Claim 2: Violation of Section 2 of the Sherman Act (15 U.S.C. § 2) –
Use of Monopoly Level of Power to Harm Competition Through Tying Scheme**

197. Plaintiffs repeat and incorporates by reference all preceding paragraphs and allegations.

198. Amazon has violated 15 U.S.C. § 2 by using its monopoly level of market power in one or more markets to foreclose competition, gain a competitive advantage, or destroy a competitor in a different market.¹⁵³

199. Amazon has a monopoly level of market power in two markets (the tying-product markets): (i) the online retail market in the United States (also referred to as the retail e-commerce market), in which Amazon controls about 65% to 70% of all marketplace sales, and (ii) the market for placement in Amazon’s Buy Box, over which Amazon has complete control.

200. The retail e-commerce market is recognized by the industry and the public as distinct from the brick-and-mortar retail market, and the two markets are different in numerous ways. For example, “unlike brick-and-mortar stores—where everyone at least sees a common price (even if they go on to receive discounts)—internet retail enables firms to entirely personalize consumer experiences, which eliminates any collective baseline from which to gauge price increases or decreases.”¹⁵⁴ Moreover, “[w]hereas brick-and-mortar stores are generally only able to collect information on actual sales, [e-commerce retailers

¹⁵³ See *Eastman Kodak Co. v. Image Tech. Servs.*, 504 U.S. 451, 480–86 (1992) (stating that two elements of a Section 2 claim in tying context are (i) “possession of monopoly power in the relevant market” and (ii) the use of monopoly power to foreclose competition, to gain a competitive advantage, or to destroy a competitor” (citations and internal quotation marks omitted)).)

¹⁵⁴ Khan, *Amazon’s Antitrust Paradox*, *supra* note 14, at 764.

1 like] Amazon track[] what shoppers are searching for but cannot find, as well as which
 2 products they repeatedly return to, what they keep in their shopping basket, and what their
 3 mouse hovers over on the screen.”¹⁵⁵ More than anything, the retail e-commerce market is
 4 distinct because of the many conveniences it offers to consumers, including the ease of
 5 comparison shopping, the elimination of travel time, unprecedented breadth of inventory,
 6 and low prices.¹⁵⁶

7 201. Amazon is able to profitably establish small but significant non-transitory
 8 price increases, beyond the competitive prices, on products sold through Amazon.

9 202. Amazon used its power in one or both these markets to foreclose competition,
 10 to gain a competitive advantage, or to destroy competitors in the United States market for
 11 logistics services for retail goods (the tied-product market)—namely, the warehousing,
 12 packing, and shipping of retail goods.

13 203. By tying a Seller’s access to the Buy Box to a Seller’s purchasing FBA,
 14 Amazon has used its monopoly level of power to force many Sellers who would otherwise
 15 prefer a different logistics provider to instead pay for Amazon’s Fulfillment services.

16 204. This has undoubtedly provided Amazon a competitive edge in the market for
 17 logistics services for retail goods. As one Seller told the House Subcommittee, but for
 18 Amazon’s linking Buy Box access to a Seller’s use of its Fulfillment services, “they would

19
 20 ¹⁵⁵ Khan, Amazon’s Antitrust Paradox, *supra* note 14, at 782.

21 ¹⁵⁶ See, e.g., *Thompson v. 1-800 Contacts, Inc.*, No. 2:16-CV-1183-TC, 2018 U.S. Dist.
 22 LEXIS 83806, at *26 (D. Utah May 17, 2018) (concluding that plaintiffs “plausibly alleged
 23 that the relevant product market [was] the *online market* for contact lenses” by, among other
 24 things, stating in their complaint that “[c]ustomers who shop online prefer the convenience
 25 of online shopping, home delivery and low prices. Online retailers’ ability to offer a unique
 combination of selection, depth and breadth of inventory, and delivery speed appeals to
 these customers.” (emphasis added) (citations and internal quotation marks omitted)).

1 not choose to use FBA, as they found Amazon’s fulfillment service was often slower and
 2 less reliable than self-fulfillment.”¹⁵⁷

3 205. A recent report analyzing Amazon’s monopoly power succinctly summarizes
 4 Amazon’s violation of Section 2:

5 Amazon’s exploitation of sellers is about more than extracting
 6 revenue from them. Amazon is also leveraging its dominance over
 7 sellers to gain market power in other sectors, furthering its monopoly
 8 strategy. Amazon has, for example, *compelled sellers to buy its*
 9 *warehousing and fulfillment services in order to get the kind positioning on*
 10 *its site that leads to sales.* Almost overnight *this move has catapulted*
 11 *Amazon to being a top logistics provider without having to compete for*
 12 *it.*¹⁵⁸

13 206. Amazon has leveraged its monopoly level of power in the realm of
 14 e-commerce to “overtake[] the U.S. Postal Service in the large e-commerce parcel market,
 15 and it’s expected to surpass UPS and FedEx by 2022.”¹⁵⁹

16 207. “Thanks to its market power over sellers, Amazon’s logistics operation now
 17 rivals the top carriers in scale. In 2019, Amazon delivered 2.5 billion parcels, or about
 18 one-fifth of all e-commerce deliveries.”¹⁶⁰

19 208. Amazon’s violation of Section 2 of the Sherman Act has injured Plaintiffs and
 20 Class Members by directly leading to higher prices for items that Plaintiffs and Class
 21 Members purchased through Amazon’s Buy Box.

22 ¹⁵⁷ House Subcommittee Report, *supra* note 15, at 289–90.

23 ¹⁵⁸ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 6.

24 ¹⁵⁹ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 2.

25 ¹⁶⁰ Mitchell, et al., *Amazon’s Monopoly Tollbooth*, *supra* note 40, at 8.

VIII. PRAYER FOR RELIEF

209. WHEREFORE, on behalf of themselves and the Class, Plaintiffs respectfully request that this Court enter an Order:

- d1 Certifying this case as a class action under Rule 23(a), (b)(2), and (b)(3) on behalf of the Class defined above, appointing Plaintiffs Angela Hogan and Andrea Sebersson as representatives of the Class, and appointing their counsel as Class Counsel;
- e1 Awarding Plaintiffs and Class Members treble damages under 15 U.S.C. § 15(a);
- f1 Awarding injunctive and other equitable relief as is necessary to protect the interests of the Class, including, among other things, an order requiring Amazon to cease its unlawful tying of access to the Buy Box to a Seller's purchase of Amazon Fulfillment services;
- g1 Awarding Plaintiffs and the Class their reasonable litigation expenses and attorneys' fees;
- h1 Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent allowable; and
- i1 Awarding such other and further relief as equity and justice may require.

IX. JURY DEMAND

210. Plaintiffs demand a trial by jury on all issues so triable.

1 Dated: June 21, 2023

By: /s/Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com

3 By: /s/Adrienne D. McEntee, WSBA #34061
Adrienne D. McEntee, WSBA #34061
Email: amcentee@terrellmarshall.com
TERRELL MARSHALL LAW GROUP
936 North 34th Street, Suite 300
Seattle, Washington 98103
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

8 Kenneth A. Wexler, *Pro Hac Vice*
Email: kaw@wbe-llp.com.com
Justin N. Boley, *Pro Hac Vice*
Email: jnb@wbe-llp.com
Zoran Tasić, *Pro Hac Vice*
Email: zt@wbe-llp.com
WEXLER BOLEY & ELGERSMA LLP
55 West Monroe Street, Suite 3300
Chicago, Illinois 60603
Telephone: (312) 346 2222
Facsimile: (312) 346 0022

15 Daniel E. Gustafson, *Pro Hac Vice*
Email: dgustafson@gustafsongluek.com
Daniel C. Hedlund, *Pro Hac Vice*
Email: dhedlund@gustafsongluek.com
Michelle J. Looby, *Pro Hac Vice*
Email: mlooby@gustafsongluek.com
Daniel J. Nordin, *Pro Hac Vice*
Email: dnordin@gustafsongluek.com
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Tel: (612) 333-8844
Fax: (612) 339-6622

Brett Cebulash, *Pro Hac Vice*
Email: bcebulash@tcclaw.com
Kevin Landau, *Pro Hac Vice*
Email: klandau@tcclaw.com
Evan Rosin, *Pro Hac Vice*
Email: erodin@tcclaw.com

TAUS, CEBULASH & LANDAU, LLP
80 Maiden Lane, Suite 1204
New York, NY 10038
Tel: (212) 931-0704
Fax: (212) 931-0703

Attorneys for Plaintiffs and the Proposed Class